

July 20, 2009

ATTORNEYS AT LAW

VEREX PLAZA
150 EAST GILMAN STREET
MADISON, WI 53703-1481
POST OFFICE BOX 1497
MADISON, WI 53701-1497
608.257.5035 TEL
608.258.4258 FAX
foley.com

WRITER'S DIRECT LINE
608.258.4276
dclark@foley.com EMAIL

CLIENT/MATTER NUMBER
080261-0105

Ms. Nola Hicks
U.S. EPA - Region 5
5CS3T
77 West Jackson Boulevard
Chicago, IL 60604

Mr. Richard Boice
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: Lemberger Site Remediation Group Revised Institutional Control Plan
and Response to Agency Comments

Dear Ms. Hicks and Mr. Boice:

This letter transmits the LSRG's revised Institutional Control Plan (ICP) for the Lemberger Landfill and Lemberger Transport & Recycling superfund sites. The ICP has been revised to address your comments and responds to each comment as noted below. We look forward to discussing this with you.

Comment 1. Section 1.3: The IC plan does not adequately describe the potential exposures that the ICs are intended to prevent. The potential routes of exposure to contaminants need to be described, including: direct contact with contaminated wastes and soils; vapor intrusion of VOCs from landfill gases and contaminated groundwater; and residential usage of groundwater (ingestion, direct contact, and inhalation exposures). Maps showing the areas where residential usage of groundwater needs to be restricted, where vapor intrusion risks exist, and landfill areas should be referenced.

Response: A more thorough identification of potential exposure pathways is included in the ICP at Sections 1.3 and 1.4 and the figures have been revised to show the estimated contaminated groundwater plume with the institutional control areas superimposed to show how the areas with contaminated groundwater are addressed by specific institutional controls.

Comment 2. Section 1.4.a; Figure 1: Revise the description of the NR-812 to be consistent with the description provided by James Walden, WDNR. Add a description of NR 506.085. The 1,200 foot restriction areas around the landfills needs to be delineated on a map. The color used to show the 250 foot casing area on Figure 1 is not well differentiated from areas where there are no restrictions. Make the legend descriptions consistent with the memorandum from James Walden.

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Response: The revised discussion of NR 812 and NR 506 is included in the ICP at Section 1.4 a i and ii. The figures have been revised as requested.

Comment 3. Section 1.4.b; Section 1.4.c; Section 1.4.e; Figure 1; Figure 2: Figures 1 and 2 do not clearly delineate the landfill area, the fences, or the deed restriction areas. It appears that a separate map is needed for this purpose.

Response: The figures have been revised to address this comment.

Comment 4. Section 1.4.g; Exhibit 2: The yellow colorings of general agriculture, and country estates are indistinguishable. This color includes the source areas, and much of the areas exceeding ESs and PALs. The relatively new wells identified on Figures 1 and 2 indicates that this area is attractive for development for rural residences. A map is needed that adequately distinguishes the different zoning categories.

Response: A more clear zoning map is included as Figure 1. A thorough discussion of existing zoning is included in Section 1.4 b, and the ICP includes copies of the relevant portions of the Town of Franklin's existing zoning ordinance/land use plan. *See* Attachment E.

Comment 5. Section 1.5: The information indicates the following deficiencies:

Comment 5a. Vapor intrusion risks have not been addressed (see OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils, EPA530-D-03-004, November 2002);

Response: The vapor intrusion risks are analyzed in Attachment B and referenced in the ICP at Section 1.2, p. 2-3.

Comment 5b. The current deed restrictions do not appear to include the entire area where development needs to be restricted because it appears that the landfill extends into the north ½ half of the SE and SW ¼s of the NE ¼ of Section 34.

Response: The legal descriptions in the updated deed restrictions have been corrected and appropriately restrict activity within the LTR fence. *See* Attachment A. The figures have also been revised to reflect the accurate legal descriptions.

Comment 5c. The proposed restrictive covenant does not appear to include the entire area where development needs to be restricted because the landfilled area appears to extend into: the east ½ of the of the NE ¼ of the NE ¼ of Section 34; and into the north ½ of the SE and SW ¼s of the NE ¼ of Section 34.

Response: *See* Response to Comment 5b.

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Comment 5d. The Town of Franklin zoning can not be effective in preventing exposures to contaminants because the zoning map does not identify areas where restrictions to development are necessary to protect remedy components, or to prevent risks from direct contact, vapor intrusion or residential water usage. For example, the zoning map would suggest that general agricultural usage is acceptable on the landfill cap.

Response: The discussion of the Town of Franklin's zoning rules is not intended to suggest that the Town's zoning, standing alone, comprehensively prevents exposure to contaminants. The zoning restrictions do not exist in isolation, however, but are part of a package of institutional controls that include the deed restrictions, access agreements, easements, and the State restrictions under NR 812 and NR 506. The Town's zoning adds yet another layer of protection that will assist in preventing exposure to contaminants. As explained in the ICP at Section 1.4 b, the zoning prevents any intense development and in fact prevents any non-agricultural development in the area. A variance or rezoning would be required to allow any new residential development. Additionally, the LSRG is working with the Town and its land use consultant to update the zoning maps, rezone the superfund sites, and assist in the evaluation of any proposals for new land use in the areas. See ICP Section 1.4 b, p. 6, and Attachment F.

Comment 6. Section 2.0: In addition to the tasks listed, the LSRG needs to perform the following tasks:

Comment 6a. Evaluate vapor intrusion risks, and delineate areas where development needs to be restricted because of vapor intrusion risks.

Response: See Response to Comment 5a.

Comment 6b. Add the east ½ of the of the NE ¼ of the NE ¼ of Section 34 to the proposed restrictive covenant being negotiated with Mr. Lemberger.

Response: See Response to Comments 5b and 5c.

Comment 6c. Pursue restrictive covenants with the owner(s) of the north ½ of the SE and SW ¼s of the NE ¼ of Section 34.

Response: See Response to Comments 5b and 5c.

Comment 5d. The LSRG needs to work with the Town of Franklin to update their zoning maps to show where development needs to be restricted.

Response: See Response to Comment 5d. See also ICP Section 1.4 b, p. 6, and Attachment E.

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Comment 5e. In addition to the support identified, if requested, the LSRG should provide support to WDNR for review of applications for high capacity wells (greater than 70 gpm) in the vicinity of the sites, and providing information for adding the sites to the registry.

Response: See Attachment E, Response to Comment 2, and Section 1.4 a ii. ICP pp. 4-5.

Comment 7. Section 3.0: Add the following additional tasks:

Comment 7a. inspection of the land records for proper recording of restrictive covenants;

Response: See Response to Comment 5.

Comment 7b. working with the Town of Franklin to update zoning maps if necessary.

Response: See Response to Comment 5d.

We hope that the identified revisions to the Plan satisfy your concerns and look forward to discussing these with you in August.

Very truly yours,

FOLEY & LARDNER LLP



Douglas B. Clark

Enclosures

cc: James Walden
Kris Krause (via electronic mail)
LSRG (via electronic mail)

July 2009

Lemberger Sites Remediation Group Institutional Control Plan For The Lemberger Landfill and Lemberger Transport & Recycling Sites

1. Introduction

The Lemberger Transport and Recycling, Inc. ("LTR") site is an inactive landfill located in Manitowoc County, Wisconsin that accepted industrial wastes in the 1970s. The Lemberger Landfill ("LL") site is located north of the LTR site and is also an inactive landfill that accepted solid and municipal waste and fly ash until the mid 1970s. The LTR site and the LL site, (collectively the "Sites"), are listed separately on the National Priorities List, but U.S. EPA studied them together, resulting in one Remedial Investigation/Feasibility Study that addressed both sites.

The remedial action selected in the September 1991 Record of Decision ("ROD") addressed the first of two Lemberger Sites operable units identified by EPA. The first operable unit, OU1, addressed groundwater contamination from both the LL and LTR sites and source contamination at the LL site and selected a remedy that included a groundwater pump and treat system to actively restore the contaminated aquifer. The ROD also required a slurry wall, a cap, leachate extraction, and other source control measures for the Lemberger Landfill. The remedial action selected in the 1992 ROD for the second operable unit, OU2, included drum and waste removal, capping, and other source control measures at the LTR site.

In a 1992 Consent Decree and a 1993 Administrative Order on Consent the Lemberger Sites Remediation Group ("LSRG") agreed to undertake the remediation of the Sites. Both the LL and the LTR sites are surrounded by fences and the LSRG currently has a full-time operator working at and monitoring both Sites.

Because hazardous substances remain at both Sites, EPA requires that the Sites be evaluated every five years. The second Five-Year Review required the LSRG to, among other things, obtain and file "restrictive covenants that restrict site development and installation of drinking water wells on LL and LTR facility properties." See 2nd Five Year Review Report, September 2005, p. 7. The LSRG had already obtained and recorded deed restrictions for the LL and LTR facility properties, but EPA requested that the LSRG obtain new restrictions with EPA approved language. Copies of the new, revised deed restrictions are included in Attachment A.

In addition, the LSRG, EPA and WDNR have been in the process of reevaluating the remedial measures for effectively addressing contamination at the Sites. As part of this process, EPA has requested an updated and expanded Institutional Control Plan ("ICP") that addresses more than merely the LL and the LTR facility properties. This Institutional Control Plan is intended to satisfy this more recent EPA request.

1.1 Statement of Purpose

The purpose of this Institutional Control Plan is to identify potential contaminant exposure pathways and identify existing and/or additional institutional control measures that effectively eliminate these exposure pathways. The ICP also outlines how the LSRG will participate in the implementation, maintenance, and management of these institutional control measures to prevent contact with contaminated waste, soil and groundwater and protect human health and the environment.

1.2 Site Description Background

The LL site is located in Section 27 and the LTR site is located in Section 34, both in Township 20 North, Range 22 East. The Sites are located in Manitowoc County, in an area that is rural and zoned for agriculture. *See* Figure 1. There are some non-farm residences in the area, primarily along the Branch River located less than one mile to the west of the LL site and northwest of the LTR site. Two residences are located within 1000 feet of the Sites.

At the LL site about 40 acres, including the waste disposal area, is enclosed within a 6 foot high fence. *See* Figure 1. The LL waste disposal area has been capped as required by the OU1 ROD, eliminating risks of contact with contaminated soil and/or waste materials. Similarly, about 40 acres, including the waste disposal area, is enclosed within the LTR fence. *See* Figure 1. As required by the OU2 ROD, i.e. the LTR source control ROD, a removal action was completed and the waste disposal area has been capped, eliminating risks of contact with contaminated soil or materials.

Groundwater contamination associated with the Sites is identified by the TCE preventive action limit (PAL) and enforcement standard (ES) plumes shown on Figures 1 – 5. Although EPA, WDNR and the LSRG have not yet achieved consensus on the precise causal explanation, the data that the LSRG collected over the past decade supports the conclusion that the ROD required source control activities and natural process, including some natural attenuation, have halted expansion of the contaminated groundwater plume. Moreover, this status has been achieved in spite of, not because of, the active pump and treat activities at the Sites that were required by the OU1 ROD. *See e.g.* 2nd Five Year Review p. 3. *See also* RMT Workplan for Monitored Natural Attenuation Engineering Demonstration Project, Revision 1, April 2006 p. 10, and RMT Monitored Natural Attenuation Engineering Demonstration Project Summary Report, December 2008 p. 5, 15, 16, 18.

Existing institutional controls at the Sites that are designed to prevent contact with contaminated soils, waste and groundwater are described in Sections 1.4 of this Institutional Control Plan and include governmental controls arising under state and local regulatory authority such as permit approval processes, zoning ordinances, the regulation of maintenance activities, and deed restrictions that the LSRG has obtained for areas of particular concern.

Recently EPA and WDNR have asked the LSRG to supplement the investigation and analysis that has already been conducted at the Sites with an assessment of the vapor intrusion risks at the Sites. This assessment is included as Attachment B. The assessment concludes that monitoring should continue but that there are no vapor intrusion risks at the Sites

that need to be actively addressed. Accordingly, no institutional controls are proposed to address vapor intrusion. Nevertheless, if vapor intrusions risks are identified in the future, the LSRG will supplement this ICP and include measures to eliminate harmful human exposure.

1.3 Performance Objectives

The objective of this ICP is to prevent human exposure to contaminants by implementing institutional controls that will eliminate potential human exposure pathways. In addition, the plan outlines how the LSRG will keep agencies and private parties informed of the institutional controls and will monitor and correct any deficiencies in the implementation of the institutional controls.

The potential contaminant exposure pathways that this ICP addresses include direct human contact with contaminated soil and contaminated waste materials and human contact with contaminated groundwater including residential exposure to contaminated groundwater via ingestion, direct contact, dermal absorption and inhalation. Indeed, the risk analysis in the ROD evaluated risks based on assumed residential occupancy on the LL and LTR sites (without any remedial measures) and the associated human exposure to contamination via direct contact with and consumption of contaminated soils, waste materials and groundwater at the concentrations that existed beneath the LTR and LL sites prior to any remediation. *See* OU1 ROD pp. 12-13.

As explained below, these risks have been effectively abated as a consequence of the completed remediation measures and the institutional controls described below and EPA has concluded that “there is no evidence of current exposure” and that, accordingly, the Sites do not pose any immediate threat to human health or the environment. *See* 2nd Five Year Review p. 3.

1.4 Types of Institutional Controls In Place

There are a number of different institutional control mechanisms in place at the LL and LTR Sites.

a. Governmental controls arising under state i.e. WDNR, regulatory authority.

i. Wisconsin Administrative Code Section NR 506.085.

The LL and the LTR sites are “solid waste disposal facilities which are no longer in operation.” As such, WDNR approval is required to use the waste disposal areas for agricultural purposes, to establish or construct any buildings, or to excavate the final cover or any waste materials. *See* Wis. Admin. Code s. NR 506.085 (1)-(3). The NR 506.085 restriction areas are shown on Figures 1 – 5. Accordingly, the caps at the two Sites and the contaminated materials below those caps cannot be disturbed, used or contacted without WDNR permission. This prevents human contact with the protective caps and the underlying waste materials at the two Sites.

ii. Wisconsin Administrative Code Chapter 812

Wisconsin Administrative Code ch. 812 regulates groundwater well placement and construction. A WDNR variance is required before any well is constructed or reconstructed within 1200 feet of a landfill site. *See Wis. Admin. Code s. NR 812.10(2)*. The 1200 foot variance area in the vicinity of the LTR and LL sites is shown on the attached Figures 1-5.

Additionally, WDNR approval is required prior to constructing or reconstructing any “well located in designated special well casing pipe depth areas.” *See Wis. Admin. Code s. NR 812.09(4)(f)*. The WDNR has designated the area potentially impacted by the contaminated groundwater plume in the vicinity of the LL and LTR sites as “designated special well casing pipe depth area” No. 18/19. *See September 28, 2008, Bureau of Drinking Water & Groundwater Special Well Casing Pipe Depth Areas pp. 9-10*. Copies of those pages are included in Attachment C. Figures 2-5 show the contaminated groundwater plume and the designated special well casing area. Under NR 812, therefore, no wells may be constructed or repaired within the area potentially impacted by contaminated groundwater without WDNR approval and/or unless the well is cased to a depth of at least 250 feet.

Thus, the WDNR’s application of the NR 812 rules at the Lemberger Sites effectively create three zones (the term “zone” is used only for the purposes of this discussion in this ICP) with different well construction rules within designated well casing area No. 18/19. The first zone (zone 1), established by NR 812.10(2), is the area that includes and immediately surrounds (i.e. is within 1200 feet of) the Sites. *See Figures 2-5*. In this zone, no well can be constructed or reconstructed without a WDNR issued variance. The second zone (zone 2), established by NR 812.09(4)(f), includes those parts of special casing area No. 18/19 closest to the Sites and the contaminated groundwater plume that are located outside of, but adjacent to, the variance-only area (zone 1) established by NR 812. *See Figures 2-5*. In this zone any well must be cased to a depth of at least 250 feet. The third zone, (zone 3), also established by NR 812.09(4)(f), includes the remaining portions of special casing area No. 18/19, i.e. the areas within the special casing area (located east of County Trunk Highway J) that are most distant from the Sites and the contaminated groundwater plume. *See Figures 2-5*. In this zone a well cannot be constructed or reconstructed without the prior approval of the WDNR. Based upon communication with WDNR, it is the LSRG’s understanding that although wells in zone 3 cannot be constructed or reconstructed without prior contact with and the express approval of WDNR, wells in zone 2 require no WDNR contact or express approval if they are cased to a depth of at least 250 feet. In other words, although zone 2 is closer to the contaminant source and contaminated groundwater plume as compared to zone 3, wells in zone 2 require less direct WDNR oversight, input and approval as compared to wells proposed for zone 3.

For this reason, and others, the LSRG analyzed the NR 812 restrictions to determine if they are adequately protective given the decade of data that the LSRG has gathered regarding groundwater contamination in the area. A copy of this analysis is included as Attachment D. The analysis concludes that the existing well construction restrictions are adequately protective for residential use of groundwater in the area. However, the analysis also concludes that the existing 250 foot casing requirement may not be adequate for wells drilled in the “250 foot casing required area,” i.e., “zone 2,” if the wells are used to extract groundwater at rates approaching high capacity extraction rates. Accordingly, the LSRG has recommended that

the WDNR consider revising the “zone 2” 250 foot casing requirement area to specify that wells in this area that will extract groundwater at rates approaching high capacity must either be screened below Maquoketa Shale, i.e. approximately 450 feet below ground surface, or must receive express WDNR review and approval. The LSRG has alternatively proposed a more simple approach, i.e. amending the restrictions that apply to special casing area No. 18/19 to require WDNR contact, review and approval of every well, including wells in the area where a minimum 250 foot casing depth, but no prior contact with WDNR, is required by the current rules.

In addition, as discussed below, the LSRG has informed its on-site operator, the Town of Franklin Plan Commission, and the Town’s land use consultant, that the LSRG would like to be notified of any proposed development or zoning changes that are being considered in the vicinity of the Lemberger Sites. The LSRG has also offered to assist the Town in evaluating any such proposals. *See* section b below.

iii. Wisconsin Notification and Informational Websites

Both the LL and LTR sites are listed in the Wisconsin Bureau of Remediation and Redevelopment Tracking System (BRRTs). The pertinent web address is:
<http://botw.dnr.state.wi.us/botw/SetUpBasicSearchForm.do>.

The LL and LTR sites are also displayed on the WDNR’s Remediation and Reclamation Sites map (RR Maps). The website for the LL Site is:
http://dnrmmaps.wi.gov/imf/imf.jsp?site=brts2&qlyr=00brts_open&qzoom=true&qbuf=250&qry=DETAIL_SEQ_NO%3D33195. The website for the LTR Site is:
http://dnrmmaps.wi.gov/imf/imf.jsp?site=brts2&qlyr=00brts_open&qzoom=true&qbuf=250&qry=DETAIL_SEQ_NO%3D33199.

These state registries and maps are intended to ensure that the public is notified of the location of, and has easy access to review information regarding the nature and dangers associated with, both the LL and LTR sites.

b. Governmental controls arising under local (Town of Franklin) zoning authority

The Town of Franklin has zoned all of the area where groundwater contamination concentrations exceed applicable performance standards as either Exclusive Agriculture or General Agriculture. *See* Figure 1.

The Exclusive Agriculture designation is designed “to maintain highly productive agricultural lands in food and fiber production by effectively limiting encroachment of non-agricultural development, minimizing land use conflicts among incompatible uses and minimizing public service and facility costs normally associated with non-agricultural development.” Only uses “consistent with agricultural uses” are permitted and those uses are defined as activities that will not convert land that has been devoted primarily to agricultural use, will not limit the surrounding land’s potential for agricultural use, will not conflict with agricultural operations on the land subject to a farmland preservation agreement, and will not conflict with agricultural operations on other properties. *See* October 14, 2008, Unified

Development Ordinance, Town of Franklin, Section 5-3 p. 16. A copy of the pertinent pages of the Ordinance are included as Attachment E.

The General Agriculture designation is designed “to establish and preserve areas for agricultural, low density residential and outdoor recreation uses without permitting an intensity of development which would require the provision of urban facilities and services. Creation of a new parcel for the purpose of building a new residential structure in the AG district, after adoption of this ordinance, will be prohibited.” See Attachment E, Unified Development Ordinance Section 5-4 p. 20.

Accordingly, without Town Plan Commission approval, no additional non-agricultural development can occur in the area potentially impacted by contamination from the Sites.

The LSRG has had numerous discussions with the Town of Franklin Plan Commission Chair and the Town’s land use consultant, Martenson & Eisele, Inc. Attachment F includes copies of two letters that follow up on these discussions. The first letter requests that the LSRG be notified and allowed to participate in any Plan Commission consideration of changes to land use in the vicinity of the Sites. The second letter asks the Town to consider changing the zoning of the two Lemberger Sites from General Agriculture to “Landfill Overlay,” or some other category that will identify the Sites as closed landfills and/or federal jurisdiction superfund sites.

c. Maintenance of remedial source control measures to prevent exposure or migration of contaminated materials and to prevent any actions or uses that would disturb the integrity of the Sites or cause or contribute to exposure of contaminated materials

Although perhaps not technically considered an institutional control, both Sites are entirely fenced and can only be accessed through locked gates with the permission of the LSRG. The LSRG does not anticipate that the fences will be removed in the future or that the Sites will be put to any other use.

Additionally, as required by the terms of the OU1 Consent Decree, the OU2 AOC, and the LSRG’s EPA-approved Operation and Maintenance Plan, the LSRG is required to regularly inspect, evaluate and repair and maintain the integrity of the caps and other required source control measures at the Sites and report the results of these activities to EPA and WDNR. The LSRG has currently contracted with RMT, Inc., the EPA-approved consultant at these Sites, to conduct the inspection, repair and maintenance activities.

In addition to the restrictions imposed on these areas under State law, i.e. NR 506 and NR 812, the LSRG has obtained and recorded deed restrictions for the LL and LTR sites and certain critical adjacent areas that prevent use of the areas in a manner that would interfere with the remediation or create health risks, without prior EPA, WDNR and LSRG approval. See section d below.

d. Proprietary controls relying on real property interests such as easements, restrictive covenants, and the like to prevent exposure or migration of contaminated materials

LSRG has obtained and recorded easements, access agreements, and deed restrictions at both Sites that prohibit any activities that might interfere with the ongoing remediation, including the recently obtained restrictions with EPA-approved language and updated legal descriptions. The new restrictions forbid any use of groundwater and any surface or subsurface disturbing activity within the Site's fenced areas without approval from EPA, WDNR and the LSRG. Copies of these restrictions are included in Attachment A.

The LSRG has also obtained restrictions on property that lies outside of the actual Superfund sites, including the area immediately north of the LTR site that includes the most significant groundwater contamination outside of the fenced Sites. No new wells or any other activities are allowed on these properties if the activity might interfere with the ongoing remediation. These limitations apply to both the property owned by Ken Lemberger and the adjacent property owned by Norbert Braun. Copies of these recorded agreements are included in Attachment G(1) (Ken Lemberger property) and Attachment G(2) (Norbert Braun property). The location of these areas is depicted on Figures 3-5.

The LSRG has entered into a variety of easements, leases and access agreements for the property that hosts LSRG-installed or LSRG-monitored observation wells, groundwater extraction wells, residential monitoring wells, and the pipelines to transport pumped groundwater to the LSRG treatment building and to the Branch River for disposal. Copies of those agreements have been previously provided to EPA and will be provided again, upon request.

e. Informational controls such as advisory signs warning the public about the dangers associated with the sites.

Both sites contain permanent markers and warning signs. Photos of these markers/signs are included in Attachment H. *See also* the discussion of the BRRT's registry and the RR Maps in section 1.4a above.

f. Residential well monitoring.

The LSRG regularly samples 23 residential groundwater wells that are located in areas that could be impacted by groundwater contamination from the Sites. Sampling is conducted semi-annually and results are reported to the property owners, the WDNR and EPA. To date none of the sampled wells have contained contamination attributable to the Sites. If that were to occur in the future, the LSRG, in consultation with EPA and WDNR, would select an appropriate response, including providing a newly cased well, providing potable water, etc. Figures 4 and 5 show the locations of the monitored residential wells.

1.5 Effectiveness of Existing Institutional Controls

The in-place controls, including the fencing, the completed source control activities, the NR 506 use restriction, the NR 812 well construction restrictions, the deed restrictions, the applicable Town of Franklin zoning, and the ongoing residential well monitoring program, have effectively prevented human contact with contamination. None of the residential

wells that are monitored by the LSRG have had exceedences of applicable performance standards. The current institutional controls provide short and long term protection from human contact with contaminants from the Sites. The governmental protections coupled with the informational and proprietary controls, signage, fencing, and the fact that the LSRG has agreements in place with most of the property owners in the area for remediation activities including monitoring wells, pipelines, etc., provide sufficient layering to ensure that the public is not exposed to harmful contaminants. *See e.g.* Figure 5. Nevertheless, as explained below, the LSRG proposes additional institutional controls at the Sites to ensure long-term effectiveness.

2.0 Proposed Institutional Controls at the Site

In addition to maintaining all existing controls at the Sites, the LSRG proposes the following additional institutional controls:

- Enhance future awareness of the restrictions by ensuring that there are adequate deed notices for all remediation works and by obtaining and recording additional deed notices when determined necessary.
- Continue the established LSRG relationship and contact with Town of Franklin Plan Commission to provide LSRG with notice of any proposed changes to land use or any development plans for the areas impacted by the Sites and support the Town of Franklin's consideration of any such proposed changes.
- Continue to work with WDNR, including ongoing LSRG analysis and recommendations of NR 812 casing depth restrictions and other well siting and pumping restrictions, and support WDNR's review of applications for new wells, including high capacity wells, within the NR 812 restriction areas.
- At every five-year review, check to ensure that the Sites are listed in the state registry of contaminated sites.
- Prior to site deletion from the NPL, evaluate whether a formal petition for a zoning change is necessary.

3.0 Monitoring of Compliance with Institutional Controls

In conjunction with the five-year reviews, an "Institutional Control Monitoring Report" will be submitted. The next such report will be due by March 15, 2010. At a minimum, this report will contain the following components:

- A description of the means (or continued means) employed to meet the institutional control requirements laid out in this plan.
- The results of visual field inspection of all areas subject to site-specific restrictions.
- An evaluation of the effectiveness of the institutional controls including whether the NR 812 restrictions cover the entire area where groundwater containment

concentrations exceed applicable performance standards and the area where pumping restrictions are necessary to prevent human contact with contaminated soils, waste materials and groundwater, and whether the current casing and pumping restrictions prevent exposure and contact with the contaminated groundwater plume.

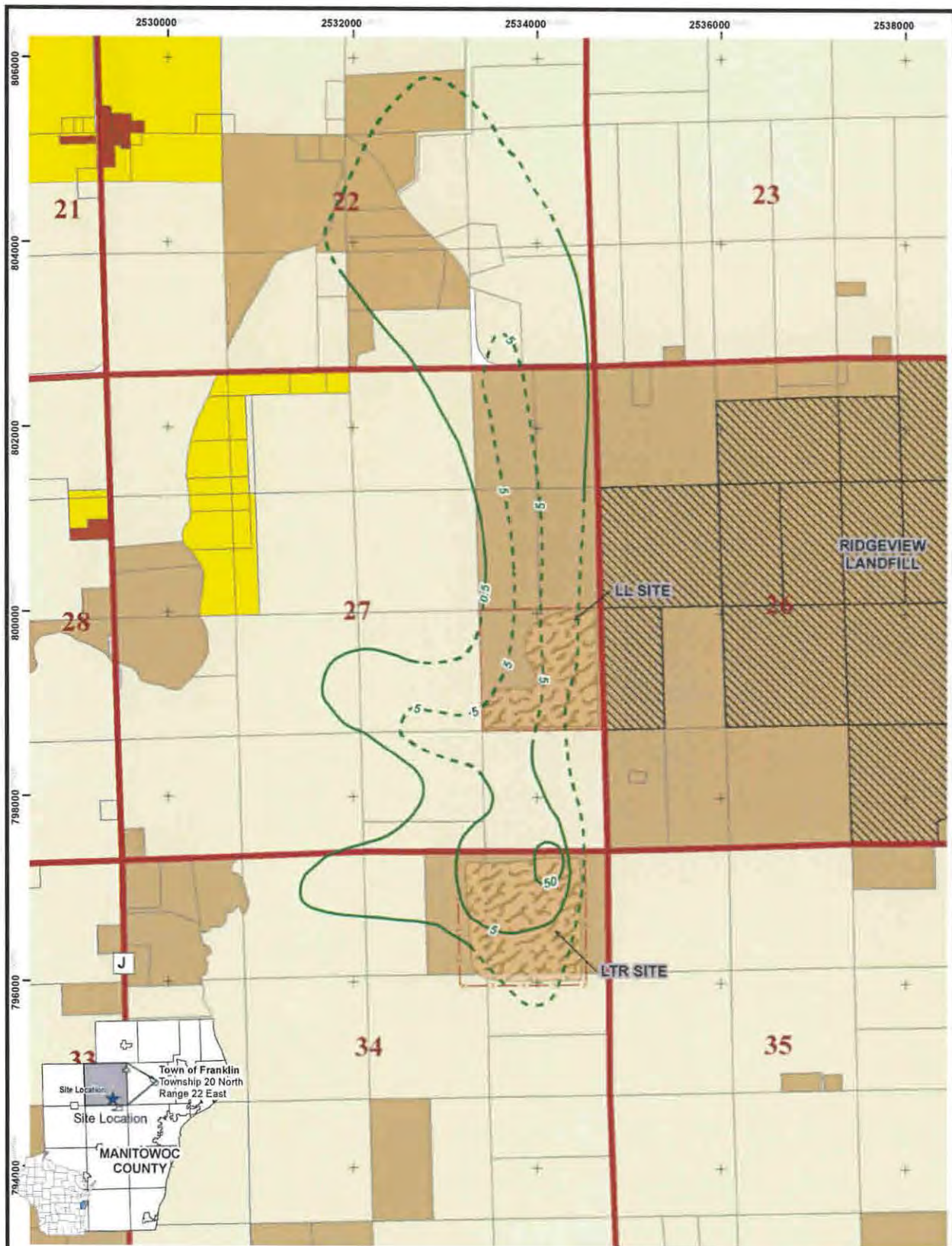
- A description of any deficiencies and the efforts or measures that have been or will be taken to correct problems.
- A description and analysis of any new or planned developments in the vicinity of the groundwater restriction area to identify and evaluate any new developments that may involve installation of wells, including contact with WDNR to determine if WDNR is aware of any such development. This information will also be provided, as appropriate, in the semi-annual O&M Reports.
- As part of the LSRG's ongoing obligation to monitor residential wells, the LSRG's contractors will gather information, including if necessary via interviews with residents, regarding unused water wells on the property, new water wells on the property or in the vicinity of the property, modifications in water supply, maintenance of existing water wells, changes in water use, water quality (e.g. taste, color, odor). Pertinent information will be included in O&M Progress Reports.
- The LSRG will update land use, deed restriction and groundwater contamination maps when significant changes are made or detected.
- When it is determined that the need for one or more institutional controls no longer exists at the Sites, the LSRG will provide a recommendation to the EPA and WDNR that such institutional controls be discontinued. Such recommendations will normally be made in conjunction with the five-year review unless a circumstance arises requiring a request earlier than the scheduled review. The LSRG will not delete or terminate an institutional control unless the EPA and WDNR have concurred in the deletion or termination.

4.0 Response to Failed Controls and Corrective Action

LSRG will notify the EPA and the WDNR as soon as is practicable upon discovery of any significant activity that is inconsistent with the institutional control objectives in this ICP or of any change in the land use or land use designation of the Sites. Examples of reportable items include:

- Unauthorized intrusion into the Sites or physical disturbance of the remedial measures, including cap, slurry well, wells, etc.
- Violation of land control objectives, leases, deed restrictions, access agreements, etc. .
- Any significant damage to the integrity of the cap, slurry wall, or other remediation works.

- Any changes in usage or plans for usage of groundwater within the restriction area.
- The LSRG will work with WDNR to make adjustments to the groundwater restriction areas, and to well and pumping restrictions within the restriction areas, as necessary.
- If problems are identified, LSRG will work with the EPA and the WDNR to determine a plan of action to rectify the situation, except in the case where LSRG believes the activity creates an emergency situation. In those cases, LSRG will respond to the emergency as necessary and contact EPA or WDNR as soon as is practicable, or as otherwise required by the terms of the governing documents, i.e. the Consent Decree, Administrative Order on Consent, and Records of Decision. Where possible, LSRG will also identify the root cause of the institutional control failure, evaluate how to best correct the process to avoid future problems, and implement these changes after consulting with EPA and WDNR.



LEGEND

- FENCE AROUND LANDFILL AREA
- NR 506.085 - LIMITS OF WASTE
- TCE CONTOUR (DASHED WHERE INFERRED)

ZONING DISTRICTS

- AG - GENERAL AGRICULTURE
- C-I - GENERAL COMMERCIAL/INDUSTRIAL
- EAG - EXCLUSIVE AGRICULTURE
- R-1 - RURAL RESIDENTIAL
- LF - LANDFILL OVERLAY



1,000 500 0 Feet

1:12,000

1 inch = 1,000 feet

NOTES

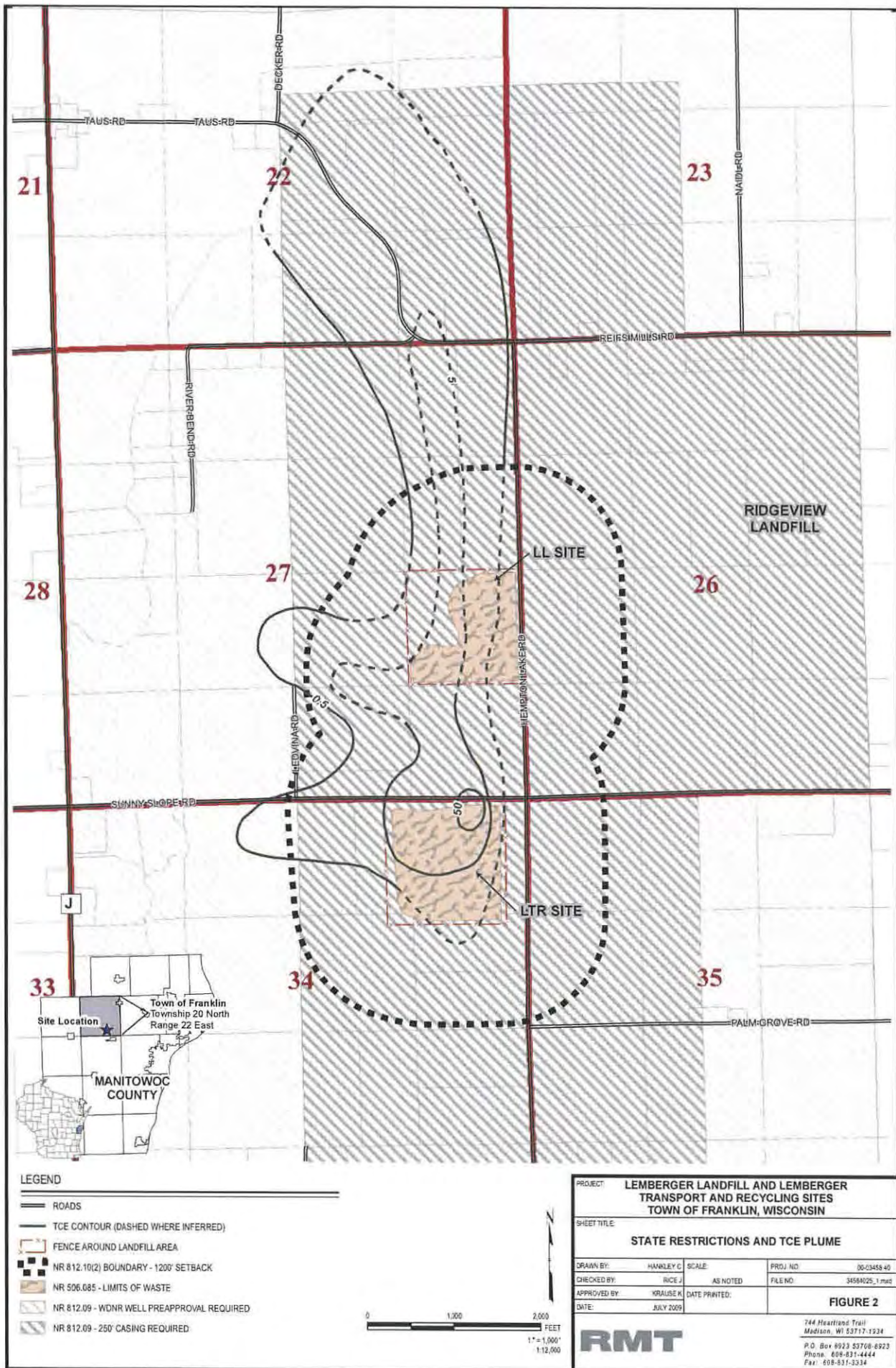
1. BASE DATA FROM MANITOWOC COUNTY GIS. PARCEL ACCURACY IS APPROX ±. FT.
2. ZONING INFORMATION FROM TOWN OF FRANKLIN
3. MAP COORDINATES REFERENCE WISCONSIN STATE PLANE, SOUTH ZONE, NAD 83, US SURVEY FOOT

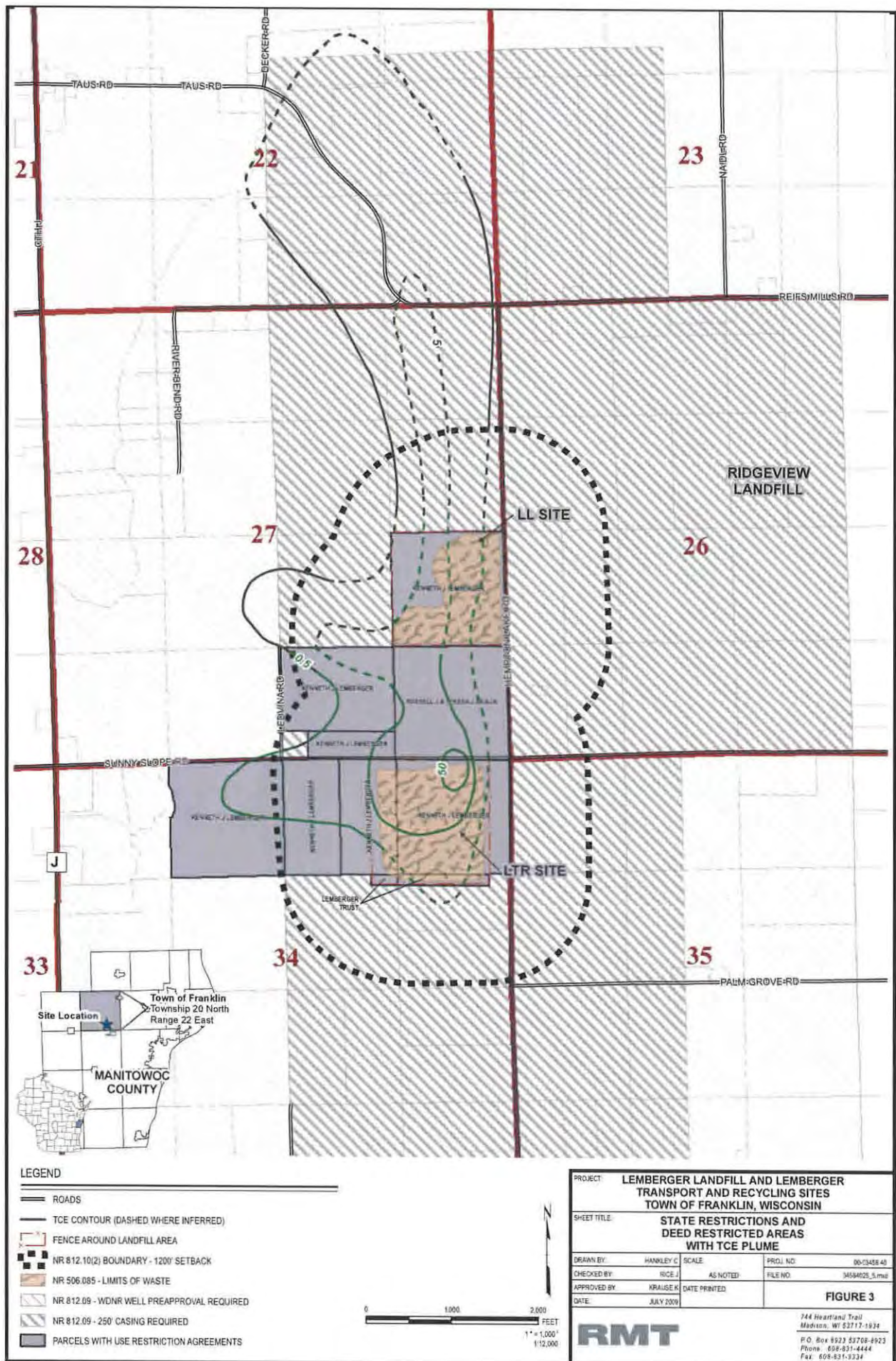
PROJECT: LEMBERGER LANDFILL AND LEMBERGER
TRANSPORT AND RECYCLING SITES
TOWN OF FRANKLIN, WISCONSIN

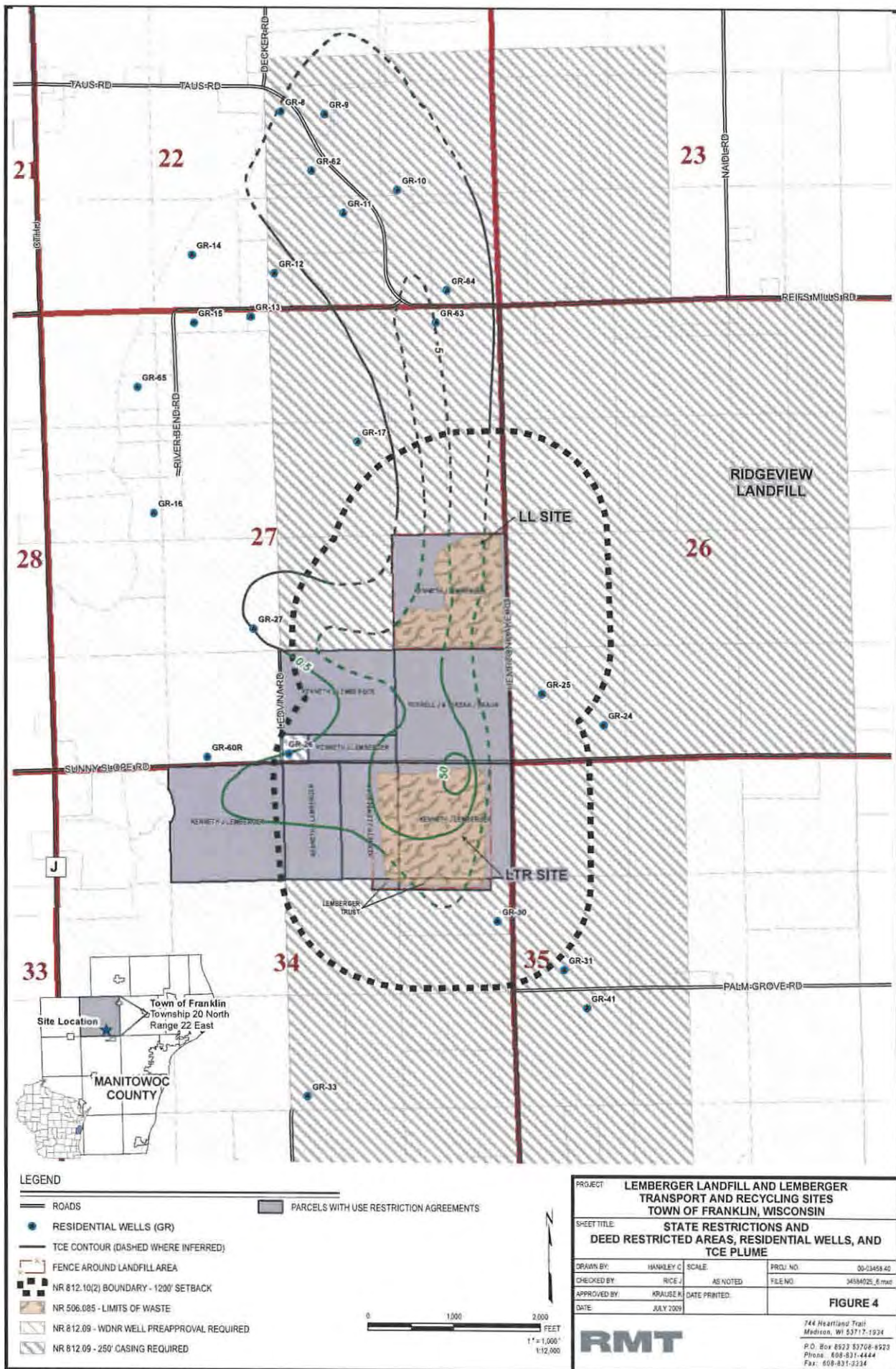
SHEET TITLE: ZONING MAP WITH WASTE AREAS
AND TCE PLUME

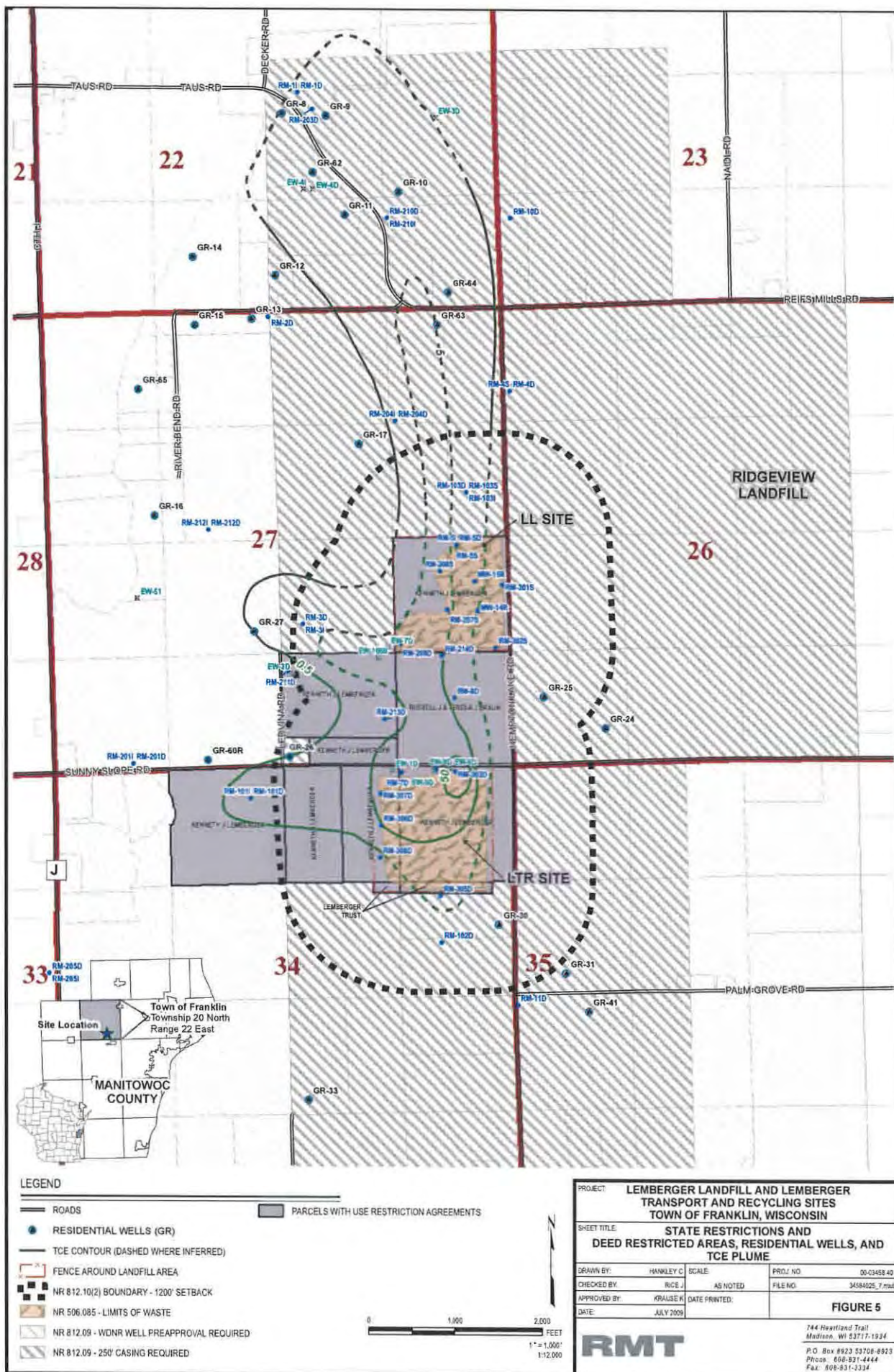
DRAWN BY: HANKLEY C	SCALE: AS NOTED	PROJ. NO: 00-03458-02
CHECKED BY: RICE J	FILE NO: 34584026_1.mxd	
APPROVED BY: KRAUSE K	DATE PRINTED:	
DATE: JULY 2009		FIGURE 1

RMT









ATTACHMENT A



Document Number

DOC# 1065459

**ENVIRONMENTAL
PROTECTION EASEMENT
AND
DECLARATION OF
RESTRICTIVE COVENANTS**

STATE OF WI - MTWC CO
PRESTON JONES REG/DEEDS
RECEIVED FOR RECORD
05/28/2009 9:35:42 AM

This Environmental Protection Easement and Declaration of Restrictive Covenants (the "Agreement") is made this 20th day of May 2009, by and between Kenneth J. Lemberger, an unmarried man (the "Grantor"), and the Lemberger Sites Remediation Group ("LSRG") ("the Grantee"). The Grantor and Grantee intend that the provisions of this Agreement also be for the benefit of the Wisconsin Department of Natural Resources ("WDNR") and the United States. WDNR and the United States are hereinafter referred to as the "Third Party Beneficiaries."

WITNESSETH:

WHEREAS, Grantor is the owner of certain land in Manitowoc County, Wisconsin, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, the LSRG is comprised of the City of Manitowoc, Manitowoc Company, Manitowoc Public Utilities, Newell Company and Red Arrow Products Company, LLC;

WHEREAS, the WDNR is acquiring this interest pursuant to Wisconsin Statutes Sec. 292.31;

WHEREAS, the Property includes the Lemberger Landfill ("LL") and part of the Lemberger Transport Recycling ("LTR") Superfund sites located near the Village of Whitelaw, which have been listed on the National Priority List under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA");

WHEREAS, the Owner and the LSRG previously executed a Global Access Agreement dated May 31, 1995 and an Amended and Restated Global Access and Easement Agreement dated June 23, 2000 (the "Prior Agreements"), which Prior Agreements specified the conditions upon which the LSRG was granted unrestricted, continuous and permanent access to the Property for itself, for the United States Environmental Protection Agency ("U.S. EPA"), for the WDNR, and each of their contractors, consultants and representatives;

WHEREAS, pursuant to the Prior Agreements, the LSRG has been investigating and remediating hazardous substance contamination and restoring the LL and the LTR sites (the

Drafted by and after recording return to:

Attorney Douglas B. Clark

Foley & Lardner LLP

P. O. Box 1497

Madison, WI 53701-1497

005-027-013-000.00,

Part of 005-034-002-001.00 and

Part of 005-034-001-000.00

Parcel Identification Number(s)

25 CLK



"Remediation") under the direction of the U.S. EPA and the WDNR, pursuant to Consent Decree No. 92-C-0583 (E.D. Wis. 1992) (the "Consent Decree") and the Administrative Order by Consent No. V-W-93-C-196 (U.S. EPA Region V, 1993) (the "AOC");

WHEREAS, the parties wish to reaffirm the Prior Agreements in their entirety and to clarify and agree to the following: (1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the remedial action; and (2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate with the Grantee in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, and in consideration of the terms of the Consent Decree and the AOC, does hereby covenant and declare that the Property shall be subject to the restrictions set forth herein. Furthermore, Grantor on behalf of itself, its successors and assigns, and in consideration of the terms of the Consent Decree and the AOC does give, grant and convey to the Grantee and its assigns, (1) the perpetual right to enforce said use restrictions, and (2) an environmental protection easement of the nature and character, and for the purposes explained in this Agreement, with respect to the Property.

2. Purpose: It is the purpose of this Agreement to convey to the Grantee rights to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. It is also the purpose of this Agreement that the Third Party Beneficiaries shall have the right to enforce the terms of this Agreement.

3. Third Party Beneficiaries: Grantor and Grantee, on behalf of themselves and their successors, transferees, and assigns, hereby agree that the WDNR and the United States, together with their successors and assigns, are the intended third party beneficiaries of all the benefits and rights conveyed to the Grantee under this Agreement.

4. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property for the benefit of the Grantee and the Third Party Beneficiaries and are binding upon the Grantor including its successors, transferees, assigns or other person acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control.

(a) Groundwater underlying the Property shall not be extracted, consumed, exposed or utilized in any way, except for the limited purpose of treating and monitoring groundwater contamination levels in accordance with plans approved by the U.S. EPA.



(b) There shall be no disturbance of the surface or subsurface of the land in any manner, including but not limited to filling, drilling, excavation, removal of topsoil, rock or minerals, or change of the topography in any manner.

5. Modification of restrictions: Any request for modification or rescission of this Agreement shall be made to the Grantee, the WDNR and the U.S. EPA at the addresses given below. This Agreement may be modified or rescinded only with the written approval of the U.S. EPA Superfund Division Director and the Director of the WDNR. Grantor, on behalf of its successors, transferees, assigns or other person acquiring an interest in the Property, agrees to file any U.S. EPA approved and WDNR approved modification to or rescission of the Agreement with the appropriate Registrar of Deeds and a certified copy shall be returned to the U.S. EPA and the WDNR at the addresses listed below.

6. Environmental Protection Easement: Grantor hereby conveys and grants to the LSRG, to the Grantee, to the Third Party Beneficiaries and to their contractors, consultants and representatives, an irrevocable, permanent and continuing environmental protection easement for access to and use of, at all reasonable times, the Property for purposes of: (i) preparing for and conducting the Remediation, including but not limited to the construction, operation and maintenance of a groundwater treatment system, a portion of which may be located on the Property and (ii) any other purpose deemed reasonably necessary by the LSRG, U.S. EPA, and/or WDNR, pursuant to the Consent Decree, the AOC, and the Prior Agreements. Subparagraph (ii) shall not be interpreted to expand the purposes for which this easement is given, but shall be interpreted to be consistent with subparagraph (i) and the purpose for which this easement is needed.

7. No Ownership. This Agreement shall not be interpreted as conveying to the LSRG, or any other party, any ownership rights to the Property. This Agreement shall not be interpreted as changing any of the provisions of the Prior Agreements. Grantor acknowledges that it has already agreed to refrain from activity on the Property, or on any additional Grantor-owned property in the vicinity of the Property, that could negatively affect the LSRG's remediation efforts or exacerbate the soil or groundwater contamination at or in the vicinity of the LL or LTR sites.

8. Reservation of Legal Rights. Nothing in this Agreement shall limit or otherwise affect U.S. EPA's rights of entry and access or U.S. EPA's authority to take response actions under CERCLA, the NCP, or other federal law, statute, rule or administrative order.

9. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this Agreement.

10. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, easements, licenses and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE**



**COVENANTS IN FAVOR OF, AND ENFORCEABLE BY
THE WISCONSIN DEPARTMENT OF NATURAL
RESOURCES AND THE UNITED STATES OF AMERICA
AS THIRD PARTY BENEFICIARIES.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this Agreement is the U.S. EPA. The WDNR has administrative jurisdiction over the interests acquired by this Agreement.

12. Enforcement: Grantee and Third Party Beneficiaries shall be entitled to enforce the terms of this Agreement by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this Agreement shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this Agreement in the event of a breach of any term of this Agreement shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this Agreement.

13. Covenants: Grantor hereby covenants to and with the Grantee and the Third Party Beneficiaries, that the Grantor is the lawful fee simple owner of the Property.

14. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Kenneth Lemberger
10007 Reif Mills Road
Whitelaw, WI 54247

To Third Party Beneficiary:

Wisconsin Dept. of Natural Resources
101 South Webster Street
Madison, WI 53703

To Third Party Beneficiary:

U.S. Environmental Protection Agency
Region Five Administrator
77 West Jackson Boulevard
Chicago, IL 60604

To LSRG:

Douglas B. Clark
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
(608) 258-4276



15. General provisions:

(a) Controlling law: The interpretation and performance of this Agreement shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of Wisconsin.

(b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the purpose of this Agreement and the policy and purpose of CERCLA. If any provision of this Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability: If any provision of this Agreement, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement: This Agreement sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein, except that unless expressly modified or amended herein, nothing in this Agreement is intended or shall be deemed to supersede, replace or amend the Prior Agreements, which remain in full effect and are legally binding on both parties.

(e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Termination of Rights and Obligations: A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(g) Counterparts: The parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(h) Binding Effect: All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land as to the Property and shall be binding upon, inure to the benefit of, and be enforceable by the Grantee, the Third Party Beneficiaries and their respective successors and assigns. Non-use or limited use of the easement rights granted in this Agreement shall not prevent the benefiting party from later use of the rights to the fullest extent authorized in this Agreement.

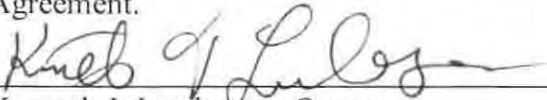
(i) Rule Against Perpetuities: In the event it shall have been determined by a court of competent jurisdiction that any of the interests conveyed or assigned or purported to be conveyed or assigned herein are void as against any rule against perpetuities or Chapter 700 of the Wisconsin Statutes, or its successor, the life or lives of such interest or interests shall be



deemed without any further action on the part of any party to be the longest life or lives possible without violation of any such rule or statute, as it is the intention of the parties hereto that the interest conveyed herein shall not be in violation of any such rule or statute.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

IN WITNESS WHEREOF, the parties hereto, which may be represented by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has the full power and authority to enter into this Agreement.


Kenneth J. Lemberger, Owner

5/20/2009
Date

LEMBERGER SITES REMEDIATION GROUP

By: 
Douglas B. Clark, Agent

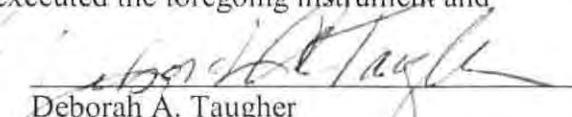
5-20-09
Date

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)



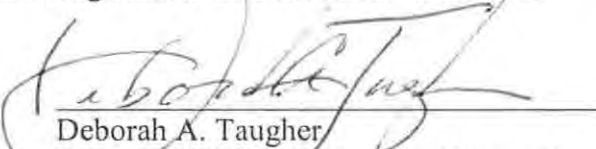
VOL 2468 PG 303

Personally came before me this 20th day of May, 2009, the above-named Kenneth J. Lemberger, to me known to be the person who executed the foregoing instrument and acknowledge that he executed the same.


Deborah A. Taugher
Notary Public, Dane County, Wisconsin
My commission expires January 6, 2013

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 20th day of May, 2009, the above named Douglas B. Clark, to me known to be the agent of Lemberger Sites Remediation Group and the person who executed the foregoing instrument and acknowledge that he/she executed the same on behalf of said entity by its authority.


Deborah A. Taugher
Notary Public, Dane County, Wisconsin
My commission expires January 6, 2013

Attachments: Exhibit A-Legal description of the Property



EXHIBIT A
Legal Description of Property

The Property that is the subject of this Environmental Protection Easement and Declaration of Restrictive Covenants is limited to the property that lies within the fences that surround the two Parcels described below:

Parcel 1:

The Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section Numbered Twenty-seven (27) Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin Manitowoc County, Wisconsin.

Parcel No.: 005-027-013-000.00

Parcel 2:

The East One-half (E 1/2) of the East One-half (E 1/2) of the Northwest Quarter (NW 1/4) of the Northeast Quarter (NE 1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

Parcel No.: Part of 005-034-002-001.00

Parcel 3:

The West One-half (1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4); and the West One-half (W 1/2) of the East One-half (E 1/2) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4), of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

Parcel No.: Part of 005-034-001-000.00



Document Number

DOC # 1065460

**ENVIRONMENTAL
PROTECTION EASEMENT
AND
DECLARATION OF
RESTRICTIVE
COVENANTS**

STATE OF WI - MTWC CO
PRESTON JONES REG/DEEDS
RECEIVED FOR RECORD
05/28/2009 9:35:42 AM

This Environmental Protection Easement and Declaration of Restrictive Covenants (the "Agreement") is made this 20th day of May 2009, by and between Terrance C. Lemberger (the "Grantor") and the Lemberger Sites Remediation Group ("LSRG") ("the Grantee"). The Grantor and Grantee intend that the provisions of this Agreement also be for the benefit of the Wisconsin Department of Natural Resources ("WDNR") and the United States. WDNR and the United States are hereinafter referred to as the "Third Party Beneficiaries."

WITNESSETH:

Drafted by and after recording return to:

Attorney Douglas B. Clark
Foley & Lardner LLP
P. O. Box 1497
Madison, WI 53701-1497

Part of 005-034-004-001.00 and
Part of 005-034-003-000.00

Parcel Identification Number(s)

25 dcl

WHEREAS, Grantor is the owner of certain land in Manitowoc County, Wisconsin, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, the LSRG is comprised of the City of Manitowoc, Manitowoc Company, Manitowoc Public Utilities, Newell Company, and Red Arrow Products Company, LLC.

WHEREAS, the WDNR is acquiring this interest pursuant to Wisconsin Statutes Sec. 292.31.

WHEREAS, the Property is part of the Lemberger Transport Recycling ("LTR") Superfund site located near the Village of Whitelaw, which has been listed on the National Priority List under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA");

WHEREAS, the Owner and the LSRG previously executed an Access and Easement Agreement dated May 11, 2005 (the "Prior Agreement") that specified the conditions upon which the LSRG was granted unrestricted, continuous and permanent access to the Property for itself, for the United States Environmental Protection Agency ("U.S. EPA"), for the WDNR, and each of their contractors, consultants and representatives;

WHEREAS, pursuant to the Prior Agreement, the LSRG has been investigating and remediating hazardous substance contamination and restoring the LTR site (the "Remediation") under the direction of the U.S. EPA and the WDNR, pursuant to Consent Decree No. 92-C-0583



(E.D. Wis. 1992) (the "Consent Decree") and the Administrative Order by Consent No. V-W-93-C-196 (U.S. EPA Region V, 1993) (the "AOC");

WHEREAS, the parties wish to reaffirm the Prior Agreement in its entirety and to clarify and agree to the following: (1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the remedial action; and (2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate with the Grantee in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, and in consideration of the terms of the Consent Decree and the AOC, does hereby covenant and declare that the Property shall be subject to the restrictions set forth herein. Furthermore, Grantor, on behalf of itself, its successors and assigns, and in consideration of the terms of the Consent Decree and the AOC, does give, grant and convey to the Grantee, and its assigns, (1) the perpetual right to enforce said use restrictions, and (2) an environmental protection easement of the nature and character, and for the purposes explained in this Agreement, with respect to the Property.

2. Purpose: It is the purpose of this Agreement to convey to the Grantee rights to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. It is also the purpose of this Agreement that the Third Party Beneficiaries shall have the right to enforce the terms of this Agreement.

3. Third Party Beneficiaries: Grantor and Grantee, on behalf of themselves and their successors, transferees and assigns, hereby agree that the WDNR and the United States, together with their successors and assigns, are the intended third party beneficiaries of all the benefits and rights conveyed to the Grantee under this Agreement.

4. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property for the benefit of the Grantee and the Third Party Beneficiaries and are binding upon the Grantor including its successors, transferees, assigns or other person acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control.

(a) Groundwater underlying the Property shall not be extracted, consumed, exposed or utilized in any way, except for the limited purpose of treating and monitoring groundwater contamination levels in accordance with plans approved by the U.S. EPA.

(b) There shall be no disturbance of the surface or subsurface of the land in any manner, including but not limited to filling, drilling, excavation, removal of topsoil, rock or minerals, or change of the topography in any manner.



5. Modification of restrictions: Any request for modification or rescission of this Agreement shall be made to the Grantee, the WDNR and the U.S. EPA at the addresses given below. This Agreement may be modified or rescinded only with the written approval of the U.S. EPA Superfund Division Director and the Director of the WDNR. Grantor, on behalf of its successors, transferees, assigns or other person acquiring an interest in the Property, agrees to file any U.S. EPA approved and WDNR approved modification to or rescission of the Agreement with the appropriate Registrar of Deeds and a certified copy shall be returned to the U.S. EPA and the WDNR at the addresses listed below.

6. Environmental Protection Easement: Grantor hereby conveys and grants to the LSRG, to the Grantee, to the Third Party Beneficiaries and to their contractors, consultants and representatives, an irrevocable, permanent and continuing environmental protection easement for access to and use of, at all reasonable times, the Property for purposes of: (i) preparing for and conducting the Remediation, including but not limited to the construction, operation and maintenance of a groundwater treatment system, a portion of which may be located on the Property and (ii) any other purpose deemed reasonably necessary by the LSRG, U.S. EPA, and/or WDNR, pursuant to the Consent Decree, the AOC, and the Prior Agreements. Subparagraph (ii) shall not be interpreted to expand the purposes for which this easement is given, but shall be interpreted to be consistent with subparagraph (i) and the purpose for which this easement is needed.

7. No Ownership. This Agreement shall not be interpreted as conveying to the LSRG, or any other party, any ownership rights to the Property. This Agreement shall not be interpreted as changing any of the provisions of the Prior Agreements. Grantor acknowledges that it has already agreed to refrain from activity on the Property that could negatively affect the LSRG's remediation efforts or exacerbate the soil or groundwater contamination at or in the vicinity of the LL or LTR sites.

8. Reservation of Legal Rights. Nothing in this Agreement shall limit or otherwise affect U.S. EPA's rights of entry and access or U.S. EPA's authority to take response actions under CERCLA, the NCP, or other federal law, statute, rule or administrative order.

9. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this Agreement.

10. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, easements, licenses and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS IN FAVOR OF, AND ENFORCEABLE BY
THE WISCONSIN DEPARTMENT OF NATURAL
RESOURCES AND THE UNITED STATES OF AMERICA
AS THIRD PARTY BENEFICIARIES.**



Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this Agreement is the U.S. EPA. The WDNR has administrative jurisdiction over the interests acquired by this Agreement.

12. Enforcement: Grantee and Third Party Beneficiaries shall be entitled to enforce the terms of this Agreement by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this Agreement shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this Agreement in the event of a breach of any term of this Agreement shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this Agreement.

13. Covenants: Grantor hereby covenants to and with the Grantee and the Third Party Beneficiaries, that the Grantor is the lawful fee simple owner of the Property.

14. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Terrance C. Lemberger
14006 County Trunk Highway K
Reedsville, WI 54230

To Third Party Beneficiary:

Wisconsin Dept. of Natural Resources
101 South Webster Street
Madison, WI 53703

To Third Party Beneficiary:

U.S. Environmental Protection Agency
Region Five Administrator
77 West Jackson Boulevard
Chicago, IL 60604

To LSRG:

Douglas B. Clark
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
(608) 258-4276

15. General provisions:

(a) Controlling law: The interpretation and performance of this Agreement shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of Wisconsin.

(b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the purpose of this Agreement and the policy and purpose of CERCLA. If any provision of this



Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability: If any provision of this Agreement, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement: This Agreement sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein, except that unless expressly modified or amended herein, nothing in this Agreement is intended or shall be deemed to supersede, replace or amend the Prior Agreement, which remains in full effect and is are legally binding on both parties.

(e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Termination of Rights and Obligations: A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(g) Counterparts: The parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(h) Binding Effect: All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land as to the Property and shall be binding upon, inure to the benefit of, and be enforceable by the Grantee, the Third Party Beneficiaries and their respective successors and assigns. Non-use or limited use of the easement rights granted in this Agreement shall not prevent the benefiting party from later use of the rights to the fullest extent authorized in this Agreement.

(i) Rule Against Perpetuities: In the event it shall have been determined by a court of competent jurisdiction that any of the interests conveyed or assigned or purported to be conveyed or assigned herein are void as against any rule against perpetuities or Chapter 700 of the Wisconsin Statutes, or its successor, the life or lives of such interest or interests shall be deemed without any further action on the part of any party to be the longest life or lives possible without violation of any such rule or statute, as it is the intention of the parties hereto that the interest conveyed herein shall not be in violation of any such rule or statute.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.



IN WITNESS WHEREOF, the parties hereto, which may be represented by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has the full power and authority to enter into this Agreement.

Terrance C. Lemberger
Terrance C. Lemberger, Owner

5/20/09
Date

LEMBERGER SITES REMEDIATION GROUP

By: Douglas B. Clark
Douglas B. Clark, Agent

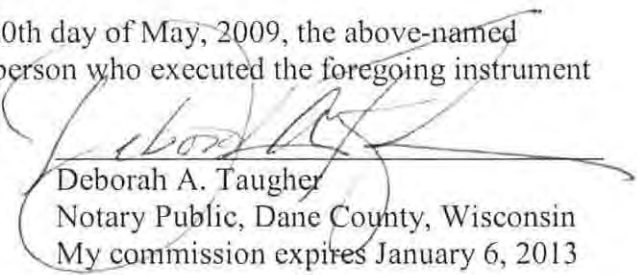
5/20/09
Date

STATE OF WISCONSIN)
) ss.
DANE COUNTY)



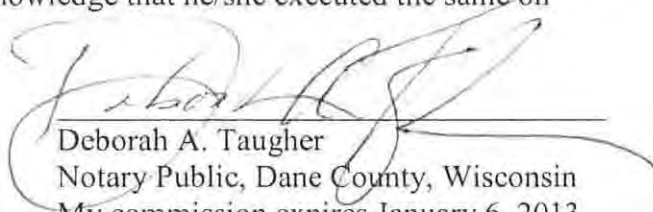
VOL 2468 PG 311

Personally came before me this 20th day of May, 2009, the above-named Terrance C. Lemberger, to me known to be the person who executed the foregoing instrument and acknowledge that he executed the same.


Deborah A. Taugher
Notary Public, Dane County, Wisconsin
My commission expires January 6, 2013

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 20th day of May, 2009, the above named Douglas B. Clark, to me known to be the agent of Lemberger Sites Remediation Group and the person who executed the foregoing instrument and acknowledge that he/she executed the same on behalf of said entity by its authority.


Deborah A. Taugher
Notary Public, Dane County, Wisconsin
My commission expires January 6, 2013

Attachments: Exhibit A-Legal description of the Property



EXHIBIT A
Legal Description of Property

The Property that is the subject of this Environmental Protection Easement and Declaration of Restrictive Covenants is limited to the property that lies within the fence at the LTR site as described below:

A parcel of approximately five (5) acres that includes:

(1) All except the East (E) Two Hundred and Fifty (250) feet of the North One-half (N $\frac{1}{2}$) of the North One-half (N $\frac{1}{2}$) of the North One-half (N $\frac{1}{2}$) of the Southeast One-quarter (SE $\frac{1}{4}$) of the Northeast One-quarter (NE $\frac{1}{4}$) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin Manitowoc County, Wisconsin.

Tax Parcel No: Part of 005-034-004-001.00

and

(2) The North One-half (N $\frac{1}{2}$) of the North One-half (N $\frac{1}{2}$) of the North One-half (N $\frac{1}{2}$) of the East (E) Two Hundred and Fifty (250) feet of the Southwest One-quarter (SW $\frac{1}{4}$), of the Northeast One-quarter (NE $\frac{1}{4}$) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin Manitowoc County, Wisconsin.

Tax Parcel No: Part of 005-034-003-000.00

ATTACHMENT B

Technical Memorandum

Date: July 20, 2009

To: Richard Boice, United States Environmental Protection Agency (USEPA)

cc: Kris Krause, John Rice, James Wedekind (RMT)
Jim Walden, Wisconsin Department of Natural Resources (WDNR)
Doug Clark, Lemberger Site Remediation Group (LSRG)

From: Nate Keller and Ken Quinn

Project No.: 3458.44

Subject: Vapor Intrusion Assessment for Lemberger Landfill

Background

On February 27, 2009, the LSRG submitted a revised Institutional Control (IC) Plan to the United States Environmental Protection Agency. Comments from the USEPA and WDNR were received in an email from Nola Hicks (USEPA) dated April 9, 2009. Some of the agency review comments pertained to vapor intrusion (VI), and included the following:

- Section 1.3: The IC plan does not adequately describe the potential exposures that the ICs are intended to prevent. The potential routes of exposure to contaminants need to be described, including: direct contact with contaminated wastes and soils; vapor intrusion of VOCs from landfill gases and contaminated groundwater; and residential usage of groundwater (ingestion, direct contact, and inhalation exposures). Maps showing the areas where residential usage of groundwater needs to be restricted, where vapor intrusion risks exist, and landfill areas should be referenced. (USEPA)
- Section 1.5: The information indicates the following deficiencies: a. Vapor intrusion risks have not been addressed (see *OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils*, EPA530-D-03-004, November 2002) (USEPA)
- Section 2.0: In addition to the tasks listed, the LSRG needs to perform the following tasks: Evaluate vapor intrusion risks, and delineate areas where development needs to be restricted because of vapor intrusion risks. (USEPA)
- Section 1.5: Vapor Intrusion: I don't recall seeing any assessment of vapor intrusion risks at this site and concur that the risk should be assessed. (WDNR)

This memorandum presents RMT's analysis of vapor intrusion risks as requested by the USEPA and WDNR. RMT used USEPA recommended guidance and additional information and guidance presented by Henry Nehls-Lowe (Division of Public Health, Wisconsin Department of Health Services) and Terry Evanson (WDNR) to assess vapor intrusion risks, and develop this memorandum. The presentations by

Technical Memorandum

Nehls-Lowe and Evanson were part of the Federation of Environmental Technologists and WDNR Vapor Intrusion Consultant's Day. The presentations are available online (<http://www.dnr.state.wi.us/org/aw/rr/technical/index.htm#train08>). Additional references used in this assessment include:

- OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance) (USEPA, 2002).
- USEPA's Vapor Intrusion Database: Preliminary Evaluation of Attenuation Factors DRAFT (USEPA, 2008).
- User's Guide for Evaluating Subsurface Vapor Intrusion into Buildings (USEPA, 2004).

RMT evaluated the potential for vapor intrusion associated with the Lemberger Landfill (LL) and the Lemberger Transport & Recycling (LTR) site. The primary constituent of concern in these evaluations is trichloroethylene (TCE), due to its toxicity and volatility. Figure 1 presents a cross section showing a north-south hydro-stratigraphic cross section through the LL and the LTR sites. This figure illustrates the potential vapor migration pathway from the UGU to a hypothetical residential receptor. Currently there are no residences which overlie areas of the UGU where there are detections of TCE. Also, as shown in this figure and discussed in this technical memorandum, although there are a number of residences located downgradient and overlying the Lower Granular Unit (LGU) or bedrock water table, there is no completed pathway from the LGU/bedrock plume.

The VI risks from the UGU were calculated for a hypothetical residence constructed over the UGU near well nest RM-103 which contains the highest TCE concentrations (3 µg/L) (Figure 2). TCE was chosen because it has the lowest cancer slope factor (in other words is the most toxic) for constituents found in the plume. The vapor intrusion guidance (USEPA, 2002) was used to determine if the Johnson-Ettinger (JE) Model (1991), or site-specific attenuation factors were appropriate for the analysis. The site-specific attenuation factors listed in Table 2c in the guidance show that concentrations of TCE in groundwater greater than 5 µg/L result in an increased lifetime cancer risk of 1×10^{-6} . TCE concentrations in the UGU are below this threshold. However, because of the shallow depth to water in this area the Johnson-Ettinger model (1991) is recommended by the guidance to fully evaluate the potential for vapor intrusion risks.

RMT calculated the vapor intrusion risk using the JE model for observed concentrations of TCE in groundwater (attached). The default values for all parameters which have defaults are used in the calculation because this is a hypothetical scenario (the rationale for these defaults is included in the guidance document (USEPA, 2002)). The remaining inputs were developed from information collected from RM-5S and RM-103S. Those values and rationale for selection include:

- Geology - Boring logs from RM-5S and RM-103S were examined and the most representative soil was selected. Based on these borings the UGU consists of silts/sands with varying amounts of fines and gravel. The boring logs are classified according to the Unified Soil Classification System (USCS), but the JE model uses the US Soil Classification System (SCS). The soil descriptions (silt/silty sand) is best represented by the sandy loam classification.

Technical Memorandum

- Depth to groundwater - 12 feet below ground surface. This was the average depth to groundwater from the last five years of monitoring for RM-103S. This location was selected for use because it is the nearest monitoring well downgradient from the Lemberger Landfill (LL).
- TCE Concentration – 3µg/L. This is the maximum concentration that was detected at RM-5S in the last five years. This well's concentration was selected because it represents the maximum TCE concentration expected in this unit.
- Average flow rate into building- The JE model uses either an assigned flow rate or can calculate a flow rate based on the soil and building conditions. We used both the default assigned rate (5 L/min) and a calculated flow rate. The calculated rate option was used because it is likely that the basement/foundation would be backfilled with the surrounding material and coarser grained material would not be required – as assumed for the default value. However, an additional scenario was run with the default 5L/min value to determine the increased risk if coarser grained material was used around the basement.

The results of the JE modeling estimated an increased risk of 4.2×10^{-8} for the scenario in which vapor flow into the building is calculated. Using the default value for vapor flow into a building (5L/min), the results of the model show an increased risk of 9.4×10^{-8} . These estimates are both below the WDNR suggested value (1×10^{-5} risk) which requires additional evaluation and is below the acceptable risk range used by EPA (1×10^{-4} to 1×10^{-6}).

EPA's 2008 Vapor Intrusion Database report provides another method for assessing the potential for vapor intrusion from VOCs in groundwater. This report presents attenuation factors from groundwater, soil gas, and subslab vapor to indoor air based on thousands of samples. The groundwater to indoor air attenuation factor recommended by this database report is 1,000. This means that the TCE in groundwater would be diluted by 1,000 times from groundwater to indoor air. In this case, a groundwater concentration of 5 µg/L would be diluted to 0.005 µg/L or 0.005 mg/m³. This is less than the indoor air standard for TCE of 0.012 mg/m³ for 10^{-5} risk contained in EPA's Region 3 Risk Based concentrations but greater than the 0.0012 mg/m³ for 10^{-6} risk (see indoor air standard in <http://www.epa.gov/reg3hwmd/risk/human/index.htm>). This comparison shows that the risk is within the acceptable risk range used by EPA (1×10^{-4} to 1×10^{-6}).

The geology of the site plays an important factor when evaluating the potential for vapor intrusion risks. Recall that the TCE impacts are mainly in the LGU and bedrock aquifer. Downgradient of the site the LGU and bedrock aquifer is overlain by a saturated clay confining unit (CU) and the saturated UGU (silt/sand) (see cross section A-A' in Figure 1). Therefore, there is not a completed vapor migration pathway from the LGU or bedrock to the surface. This is because vapor cannot move through saturated soil, so vapor migration from the LGU is blocked by the overlying saturated soils. Therefore, the only potential source of vapor migration to any future homes downgradient of the site is from VOCs present in the UGU.

Technical Memorandum

The groundwater concentration that poses a potential risk of greater than 10^{-5} can be calculated using either the JE model or the attenuation factor from USEPA's 2008 Vapor Intrusion Database. The JE model results in the calculated concentration in groundwater to be 321 $\mu\text{g/L}$ whereas the USEPA database method, using an attenuation factor of 1,000, yields a value of 12 $\mu\text{g/L}$. WDNR recommends using predicted values based on the USEPA database method using an attenuation factor of 1,000. Therefore, if the TCE concentration in groundwater of the UGU increases above 12 $\mu\text{g/L}$, there may be the potential for indoor air to exceed the 10^{-5} risk standard of 12 ug/m^3 . As stated above, the VOC concentrations in the LGU do not affect vapor concentrations above the CU.

Based on results discussed above RMT recommends the following actions:

- Continued monitoring of the UGU should be conducted, with periodic review of the potential for vapor intrusion.
- If VOC concentrations increase, additional assessment should be conducted. For example, if TCE concentrations in the UGU exceed 12 $\mu\text{g/L}$, additional assessment should be conducted to determine whether there is a potential risk for exceeding the appropriate standard for TCE in indoor air.

Select slides from WDNR presentations (Evanson, 2007 and 2008)

When must action to mitigate VI be taken?

- Standard exposure equations, as found on EPA websites, can be used to calculate the ambient air screening level. Equations should be adjusted for residential or non-residential use.
- Standard EPA attenuation factors should be used
 - 0.1 sub-slab vapor to indoor air
 - 0.01 deep soil gas to indoor air
 - 0.001 groundwater to indoor air

Common Questions about VI results

- Will the DNR accept different attenuation factors from those recommended by EPA?
 - DNR recommends the attenuation factors set out by EPA in their 2002 VI guidance
 - We will implement whatever changes EPA makes to their recommendations

When must action to mitigate VI be taken?

- If indoor air OR sub-slab concentrations (with the appropriate attenuation factor) exceed the 1-in-100,000 excess lifetime cancer risk, then an actual or potential human health risk exists and action to mitigate the risk must be taken.
- Exceedance of risk screening levels in sub-slab vapors alone will trigger the need for mitigation.

DATA ENTRY SHEET

GW-ADV
Version 3.1; 02/04

Reset to
Defaults

CALCULATE RISK-BASED GROUNDWATER CONCENTRATION (enter "X" in "YES" box)

YES ☒ X

OR

CALCULATE INCREMENTAL RISKS FROM ACTUAL GROUNDWATER CONCENTRATION (enter "X" in "YES" box and initial groundwater conc. below)

YES ☐

ENTER Chemical CAS No. (numbers only, no dashes)		ENTER Initial groundwater conc., C_w ($\mu\text{g/L}$)		Chemical								
79016				Trichloroethylene								
ENTER Average soil/ groundwater temperature, T_s ($^{\circ}\text{C}$)	ENTER Depth below grade to bottom of enclosed space floor, L_F (cm)	ENTER Depth below grade to water table, L_{WT} (cm)	ENTER Totals must add up to value of L_{WT} (cell G28) Thickness of soil stratum A, h_A (cm)			ENTER Thickness of soil stratum B, (Enter value or 0) h_B (cm)	ENTER Thickness of soil stratum C, (Enter value or 0) h_C (cm)	ENTER Soil stratum directly above water table, (Enter A, B, or C)	ENTER SCS soil type directly above water table	ENTER Soil stratum A SCS soil type (used to estimate soil vapor permeability)	OR	ENTER User-defined stratum A soil vapor permeability, k_v (cm^2)
10	200	365.76	365.76				A	SL	SL			
ENTER Stratum A SCS soil type Lookup Soil Parameters	ENTER Stratum A soil dry bulk density, ρ_b^A (g/cm^3)	ENTER Stratum A soil total porosity, n^A (unitless)	ENTER Stratum A soil water-filled porosity, θ_w^A (cm^3/cm^3)	ENTER Stratum B SCS soil type Lookup Soil Parameters	ENTER Stratum B soil dry bulk density, ρ_b^B (g/cm^3)	ENTER Stratum B soil total porosity, n^B (unitless)	ENTER Stratum B soil water-filled porosity, θ_w^B (cm^3/cm^3)	ENTER Stratum C SCS soil type Lookup Soil Parameters	ENTER Stratum C soil dry bulk density, ρ_b^C (g/cm^3)	ENTER Stratum C soil total porosity, n^C (unitless)	ENTER Stratum C soil water-filled porosity, θ_w^C (cm^3/cm^3)	
SL	1.62	0.387	0.103	SL	1.62	0.387	0.103	SL	1.62	0.387	0.103	
ENTER Enclosed space floor thickness, L_{crack} (cm)	ENTER Soil-bldg. pressure differential, ΔP ($\text{g/cm}^2\text{-s}^2$)	ENTER Enclosed space floor length, L_A (cm)	ENTER Enclosed space floor width, W_B (cm)	ENTER Enclosed space height, H_B (cm)	ENTER Floor-wall seam crack width, w (cm)	ENTER Indoor air exchange rate, ER (1/h)	ENTER Average vapor flow rate into bldg, OR Leave blank to calculate Q_{soil} (L/m)					
10	40	1000	1000	366	0.1	0.25	5					
ENTER Averaging time for carcinogens, AT_c (yrs)	ENTER Averaging time for noncarcinogens, AT_{nc} (yrs)	ENTER Exposure duration, ED (yrs)	ENTER Exposure frequency, EF (days/yr)	ENTER Target risk for carcinogens, TR (unitless)	ENTER Target hazard quotient for noncarcinogens, THQ (unitless)							
70	30	30	350	1.0E-05	1							
Used to calculate risk-based groundwater concentration.												

END

RESULTS SHEET

RISK-BASED GROUNDWATER CONCENTRATION CALCULATIONS:

Indoor exposure groundwater conc., carcinogen (µg/L)	Indoor exposure groundwater conc., noncarcinogen (µg/L)	Risk-based indoor exposure groundwater conc., (µg/L)	Pure component water solubility, S (µg/L)	Final indoor exposure groundwater conc., (µg/L)
3.21E+02	1.10E+03	3.21E+02	1.47E+06	3.21E+02

INCREMENTAL RISK CALCULATIONS:

Incremental risk from vapor intrusion to indoor air, carcinogen (unitless)	Hazard quotient from vapor intrusion to indoor air, noncarcinogen (unitless)
NA	NA

MESSAGE AND ERROR SUMMARY BELOW: (DO NOT USE RESULTS IF ERRORS ARE PRESENT)

MESSAGE: The values of Csource and Cbuilding on the INTERCALCS worksheet are based on unity and do not represent actual values.

MESSAGE: Risk/HQ or risk-based groundwater concentration is based on a route-to-route extrapolation.

SCROLL
DOWN
TO "END"

END

DATA ENTRY SHEET

GW-ADV
Version 3.1; 02/04

Reset to
Defaults

CALCULATE RISK-BASED GROUNDWATER CONCENTRATION (enter "X" in "YES" box)

YES

OR

CALCULATE INCREMENTAL RISKS FROM ACTUAL GROUNDWATER CONCENTRATION (enter "X" in "YES" box and initial groundwater conc. below)

YES

X

ENTER Chemical CAS No. (numbers only, no dashes)		ENTER Initial groundwater conc., C_w ($\mu\text{g/L}$)		Chemical Trichloroethylene								
79016		3.00E+00										
MORE ↓	ENTER Average soil/ groundwater temperature, T_s ($^{\circ}\text{C}$)	ENTER Depth below grade of enclosed space floor, L_F (cm)	ENTER Depth below grade to water table, L_{WT} (cm)	ENTER Thickness of soil stratum A, h_A (cm)	ENTER Thickness of soil stratum B, (Enter value or 0) h_B (cm)	ENTER Thickness of soil stratum C, (Enter value or 0) h_C (cm)	ENTER Soil stratum directly above water table, (Enter A, B, or C)	ENTER SCS soil type directly above water table	ENTER Soil stratum A SCS soil type (used to estimate soil vapor permeability)	OR	ENTER User-defined stratum A soil vapor permeability, k_v (cm^2)	
	10	200	365.76	365.76			A	SL	SL			
MORE ↓	ENTER Stratum A SCS soil type Lookup Soil Parameters	ENTER Stratum A soil dry bulk density, ρ_b^A (g/cm^3)	ENTER Stratum A soil total porosity, n^A (unitless)	ENTER Stratum A soil water-filled porosity, θ_w^A (cm^3/cm^3)	ENTER Stratum B SCS soil type Lookup Soil Parameters	ENTER Stratum B soil dry bulk density, ρ_b^B (g/cm^3)	ENTER Stratum B soil total porosity, n^B (unitless)	ENTER Stratum B soil water-filled porosity, θ_w^B (cm^3/cm^3)	ENTER Stratum C SCS soil type Lookup Soil Parameters	ENTER Stratum C soil dry bulk density, ρ_b^C (g/cm^3)	ENTER Stratum C soil total porosity, n^C (unitless)	ENTER Stratum C soil water-filled porosity, θ_w^C (cm^3/cm^3)
	SL	1.62	0.387	0.103	SL	1.62	0.387	0.103	SL	1.62	0.387	0.103
MORE ↓	ENTER Enclosed space floor thickness, L_{crack} (cm)	ENTER Soil-bldg. pressure differential, ΔP ($\text{g/cm} \cdot \text{s}^2$)	ENTER Enclosed space floor length, L_B (cm)	ENTER Enclosed space floor width, W_B (cm)	ENTER Enclosed space height, H_B (cm)	ENTER Floor-wall seam crack width, w (cm)	ENTER Indoor air exchange rate, ER (1/h)	ENTER Average vapor flow rate into bldg. OR Leave blank to calculate Q_{soil} (L/m)				
	10	40	1000	1000	366	0.1	0.25	5				
MORE ↓	ENTER Averaging time for carcinogens, AT_c (yrs)	ENTER Averaging time for noncarcinogens, AT_{nc} (yrs)	ENTER Exposure duration, ED (yrs)	ENTER Exposure frequency, EF (days/yr)	ENTER Target risk for carcinogens, TR (unitless)	ENTER Target hazard quotient for noncarcinogens, THQ (unitless)						
	70	30	30	350	1.0E-06	1						
								Used to calculate risk-based groundwater concentration.				

END

RESULTS SHEET

RISK-BASED GROUNDWATER CONCENTRATION CALCULATIONS:

Indoor exposure groundwater conc., carcinogen (µg/L)	Indoor exposure groundwater conc., noncarcinogen (µg/L)	Risk-based indoor exposure groundwater conc., (µg/L)	Pure component water solubility, S (µg/L)	Final indoor exposure groundwater conc., (µg/L)
NA	NA	NA	1.47E+06	NA

INCREMENTAL RISK CALCULATIONS:

Incremental risk from vapor intrusion to indoor air, carcinogen (unitless)	Hazard quotient from vapor intrusion to indoor air, noncarcinogen (unitless)
9.4E-08	2.7E-03

MESSAGE AND ERROR SUMMARY BELOW: (DO NOT USE RESULTS IF ERRORS ARE PRESENT)

MESSAGE: Risk/HQ or risk-based groundwater concentration is based on a route-to-route extrapolation.

SCROLL
DOWN
TO "END"

END

DATA ENTRY SHEET

GW-ADV
Version 3.1; 02/04

CALCULATE RISK-BASED GROUNDWATER CONCENTRATION (enter "X" in "YES" box)

YES

OR

CALCULATE INCREMENTAL RISKS FROM ACTUAL GROUNDWATER CONCENTRATION (enter "X" in "YES" box and initial groundwater conc. below)

YES

X

Reset to
Defaults

ENTER

Chemical
CAS No.
(numbers only,
no dashes)

ENTER

Initial
groundwater
conc.,
 C_w
($\mu\text{g/L}$)

Chemical

79016

3.00E+00

Trichloroethylene

MORE
↓

ENTER

Average
soil/
groundwater
temperature,
 T_s
($^{\circ}\text{C}$)

ENTER

Depth
below grade
of enclosed
space floor,
 L_F
(cm)

ENTER

Depth
below grade
to water table,
 L_{WT}
(cm)

ENTER

Thickness
of soil
stratum A,
 h_A
(cm)

ENTER

Thickness
of soil
stratum B,
(Enter value or 0)
 h_B
(cm)

ENTER

Thickness
of soil
stratum C,
(Enter value or 0)
 h_C
(cm)

ENTER

Soil
stratum
directly above
water table,
(Enter A, B, or C)

ENTER

SCS
soil type
directly above
water table

ENTER

Soil
stratum A
SCS
soil type
(used to estimate
soil vapor
permeability)

OR

ENTER

User-defined
stratum A
soil vapor
permeability,
 k_s
(cm^2)

10

200

365.76

365.76

A

SL

SL

MORE
↓

ENTER

Stratum A
SCS
soil type
Lookup Soil
Parameters

ENTER

Stratum A
soil dry
bulk density,
 ρ_b^A
(g/cm^3)

ENTER

Stratum A
soil total
porosity,
 n^A
(unitless)

ENTER

Stratum A
soil water-filled
porosity,
 θ_w^A
(cm^3/cm^3)

ENTER

Stratum B
SCS
soil type
Lookup Soil
Parameters

ENTER

Stratum B
soil dry
bulk density,
 ρ_b^B
(g/cm^3)

ENTER

Stratum B
soil total
porosity,
 n^B
(unitless)

ENTER

Stratum B
soil water-filled
porosity,
 θ_w^B
(cm^3/cm^3)

ENTER

Stratum C
SCS
soil type
Lookup Soil
Parameters

ENTER

Stratum C
soil dry
bulk density,
 ρ_b^C
(g/cm^3)

ENTER

Stratum C
soil total
porosity,
 n^C
(unitless)

ENTER

Stratum C
soil water-filled
porosity,
 θ_w^C
(cm^3/cm^3)

SL

1.62

0.387

0.103

SL

1.62

0.387

0.103

SL

1.62

0.387

0.103

MORE
↓

ENTER

Enclosed
space
floor
thickness,
 L_{crack}
(cm)

ENTER

Soil-bldg.
pressure
differential,
 ΔP
($\text{g/cm} \cdot \text{s}^2$)

ENTER

Enclosed
space
floor
length,
 L_B
(cm)

ENTER

Enclosed
space
floor
width,
 W_B
(cm)

ENTER

Enclosed
space
height,
 H_B
(cm)

ENTER

Floor-wall
seam crack
width,
 w
(cm)

ENTER

Indoor
air exchange
rate,
 ER
(1/h)

ENTER

Average vapor
flow rate into bldg.
OR
Leave blank to calculate
 Q_{soil}
(L/m)

10

40

1000

1000

366

0.1

0.25

MORE
↓

ENTER

Averaging
time for
carcinogens,
 AT_C
(yrs)

ENTER

Averaging
time for
noncarcinogens,
 AT_{nc}
(yrs)

ENTER

Exposure
duration,
 ED
(yrs)

ENTER

Exposure
frequency,
 EF
(days/yr)

ENTER

Target
risk for
carcinogens,
 TR
(unitless)

ENTER

Target hazard
quotient for
noncarcinogens,
 THQ
(unitless)

70

30

30

350

1.0E-06

1

END

Used to calculate risk-based
groundwater concentration.

RESULTS SHEET

RISK-BASED GROUNDWATER CONCENTRATION CALCULATIONS:

Indoor exposure groundwater conc., carcinogen (µg/L)	Indoor exposure groundwater conc., noncarcinogen (µg/L)	Risk-based indoor exposure groundwater conc., (µg/L)	Pure component water solubility, S (µg/L)	Final indoor exposure groundwater conc., (µg/L)
NA	NA	NA	1.47E+06	NA

INCREMENTAL RISK CALCULATIONS:

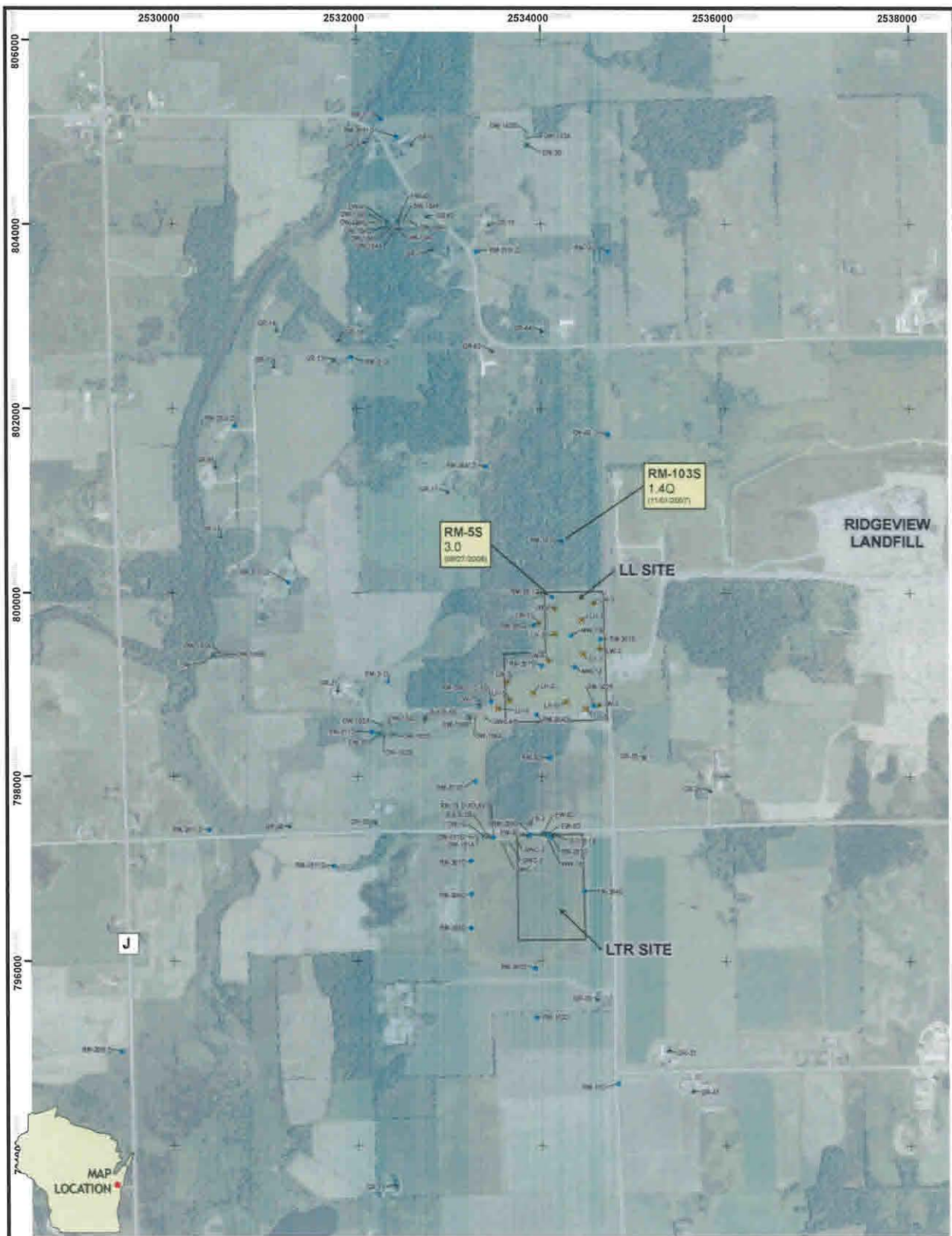
Incremental risk from vapor intrusion to indoor air, carcinogen (unitless)	Hazard quotient from vapor intrusion to indoor air, noncarcinogen (unitless)
4.2E-08	1.2E-03

MESSAGE AND ERROR SUMMARY BELOW: (DO NOT USE RESULTS IF ERRORS ARE PRESENT)

MESSAGE: Risk/HQ or risk-based groundwater concentration is based on a route-to-route extrapolation.

SCROLL
DOWN
TO "END"

END



LEGEND

- SAMPLE AND MONITORING LOCATIONS**
- ⊙ BEDROCK BORING
 - GW COLLECTION SUMP (GWC)
 - ⊗ GW EXTRACTION WELL (EW)
 - GW OBSERVATION WELL (OW)
 - ✱ LEACHATE HEAD WELL (LH)
 - ✱ LEACHATE WITHDRAWAL WELL (LW)
 - MONITORING WELL (RM)
 - ✱ RESIDENTIAL WELL (GW)

LANDFILL AREA

RM-103S
1.4Q
(11/01/2007)

MAXIMUM TCE
CONCENTRATION (μg/L)
REPORTED IN THE LAST
5 YEARS

NOTES

1. AERIAL IMAGERY FROM USDA - NATIONAL AGRICULTURE IMAGERY PROGRAM 2005.
2. MAP COORDINATES REFERENCE WISCONSIN STATE PLANE, SOUTH ZONE, NAD 83, US SURVEY FOOT.



0 1,000
1" = 1,000'
1/12,000

PROJECT: **LEMBERGER LANDFILL AND LEMBERGER
TRANSPORT AND RECYCLING SITES
TOWN OF FRANKLIN, WISCONSIN**

SHEET TITLE: **TCE CONCENTRATIONS IN THE
UPPER GROUNDWATER UNIT**

DRAWN BY: RAPEZ J	SCALE: AS NOTED	PROJ. NO.: 00-03458-40
CHECKED BY: WEDEKIND J	DATE PRINTED: 7/20/2009	FILE NO.: 34584405.mxd
APPROVED BY: KRAUSE K		FIGURE 2
DATE: JULY 2009		

RMT

744 Heartland Trail
Madison, WI 53717-1924
P.O. Box 8923 53708-8923
Phone: 608-831-4444
Fax: 608-831-3334

ATTACHMENT C

**BUREAU OF DRINKING WATER & GROUNDWATER
SPECIAL WELL CASING PIPE DEPTH AREAS @*#**

[authorized by s. NR 812.12(3)]

COUNTY	LOCATION	CONTAMINANT	CASING REQUIREMENTS
Brown 02/25/88 Area 1	Town of Ledgeview (<i>Scraps Hill</i>) T23N, R21E - Section 32 - SW¼ - N½ of the SE¼ - S½ of the NE¼	VOCs	Contact DNR Northeast Region Office for <u>required</u> approval
Brown 08/12/08 Area 81	Town of Morrison (<i>Community of Wayside</i>) (Also a Special Area of Well Compensation Eligibility established on 03/17/06) T21N, R21E - Section 28 - S½ of the S½ except for the SW¼ of the SW¼ - Section 33 - That portion of the NE¼ of the NW¼ lying north of Wayside Creek - That portion of the NE¼ lying north of Wayside Creek - That portion of the SE¼ of the NW¼ lying north of Wayside Creek - Section 34 - That portion of the NW¼ lying west of Wayside Creek	Livestock waste	Cement-grouted casing to a depth of at least 250 feet ; and: -- Use of rotary mud-circulation or cable-tool drilling methods only – no rotary-air methods; -- Upper-enlarged drillhole must be at least 8 ¾ - inch diameter for 6-inch wells or 2 inches larger than nominal casing diameter for larger wells; -- Cement grout must be ordered from commercial concrete company, have a density of at least 15.2 lbs./gal & be verified with a mud balance; -- Only Bradenhead or grout shoe method may be used; -- Grout must be allowed to set at least 24 hours.
Calumet 02/11/88 Area 2	Town of Charlestown (<i>Gravesville</i>) (near Chilton) T18N, R20E - Section 8 - SW¼ - Section 7 - Government Lots 3 and 4 - Section 18 - Government Lots 1 and 2 - Section 17	Bacteria/Nitrate	Contact DNR Northeast Region Office for <u>required</u> approval

@ NOTE: Section NR 812.14(1)(j) requires wells that are constructed to withdraw water from any of the aquifers beneath the “Maquoketa” Shale and the “Niagara” formation (dolomite) in the eastern part of the State shall be cased and cement-grouted at least through the “Niagara” formation. If a liner is used to case off the “Niagara” formation, the “Maquoketa” Shale formation or both, the liner shall be installed in a manner conforming with the requirements of s. NR 812.21(1).

* NOTE: If a well is less than 1,200 feet from a landfill, a landfill variance is still required.

NOTE: Section NR 812.(16), Wis. Adm. Code, states: When a quarry is within 1,200 feet of any proposed well, the upper enlarged drillhole and well casing pipe depth requirements shall be referenced from the bottom of the quarry. When the bottom of the existing or proposed quarry is or will be at an elevation higher than the elevation of the ground surface at the well site, this requirement does not apply. If a well site is within 1,200 feet of a quarry and is also located within a special well casing requirement area, the more stringent requirement shall be used.

COUNTY	LOCATION	CONTAMINANT	CASING REQUIREMENTS
	- N ½ east of Allen Creek		
Kewaunee 11/5/57 10/25/71 08/6/74 Area 8b	Town of Red River (<i>Extension of Door Co Special Casing Depth Area</i>) T25N, R23E -Sections 1 through 6	Bacteria	100 to 170' <u>required</u> See DNR maps Contact DNR Northeast Region Office for approval outside zoned areas
Kewaunee 11/5/57 10/25/71 08/6/74 Area 8b	Town of Lincoln (<i>Extension of Door Co Special Casing Depth Area</i>) T25N, R24E -Sections 1 through 6	Bacteria	100 to 170' <u>required</u> See DNR maps Contact DNR Northeast Region Office for approval outside zoned areas
Kewaunee 11/5/57 10/25/71 08/6/74 Area 8b	Town of Ahnapee (<i>Extension of Door Co Special Casing Depth Area</i>) T25N, R25E - Sections 1-6 T25N, R26E - Section 6	Bacteria	Contact DNR Northeast Region Office for <u>required</u> approval.
Lincoln 09/27/95 12/2/96 Rev. 02/22/01 Area 17	Town of Merrill (<i>Merrill Landfill Area</i>) T32N, R7E - Section 29 - SW¼ - Section 30 - SE¼ - Section 31 - NE¼ - Section 32 - NW¼, only that portion north & west of the Prairie River	VOCs	Contact the DNR Northern Region Office in Rhinelander for <u>required</u> approval
Manitowoc 09/14/88 Area 18/19	Town of Cato (<i>Lemberger Landfill Site</i>) T19E, R22E - Section 1 - NW¼ of the NW¼ - Section 2 - N½ of the N½ - Section 3 - N½ of the N½	VOCs	Contact DNR Northeast Region Office for <u>required</u> approval

COUNTY	LOCATION	CONTAMINANT	CASING REQUIREMENTS
Manitowoc 08/12/08 Area 85	Town of Cooperstown (Also a Special Area of Well Compensation Eligibility established on 08/12/08) T21N, R22E - Section 1 (entire section) - Section 2 - E $\frac{1}{2}$ - Section 12 - N $\frac{1}{2}$ of the N $\frac{1}{2}$ - Section 13 - N $\frac{1}{2}$ of the NE $\frac{1}{4}$	Livestock Waste	Cement-grouted casing to a depth of at least 170 feet; and: -- Use of rotary mud-circulation or cable-tool drilling methods only – no rotary-air methods; -- Upper-enlarged drillhole must be at least 8 $\frac{3}{4}$ - inch diameter for 6-inch wells or 2 inches larger than nominal casing diameter for larger wells; -- Cement grout must be ordered from commercial concrete company, have a density of at least 15.2 lbs./gal & be verified with a mud balance; -- Only Bradenhead or grout shoe method may be used; -- Grout must be allowed to set for at least 24 hours.
Manitowoc 09/14/88 Area 19/18	Town of Franklin (Lemberger Landfill Site) T20N, R22E - Section 22 - SE $\frac{1}{4}$ - S $\frac{1}{2}$ of the NE $\frac{1}{4}$ - Section 23 - SW $\frac{1}{4}$ - S $\frac{1}{2}$ of the NW $\frac{1}{4}$ - Section 26 (Entire section) - Section 27 - E $\frac{1}{2}$ - Section 34 - E $\frac{1}{2}$ - Section 35 - W $\frac{1}{2}$	VOCs	250' casing <u>required</u>

COUNTY	LOCATION	CONTAMINANT	CASING REQUIREMENTS
Manitowoc 09/14/88 Area 19/18	Town of Franklin (<i>Lemberger Landfill Site</i>) T20N, R22E <ul style="list-style-type: none"> - Section 22 <ul style="list-style-type: none"> - W$\frac{1}{2}$ - N$\frac{1}{2}$ of the NE$\frac{1}{4}$ - Section 23 <ul style="list-style-type: none"> - N$\frac{1}{2}$ of the NW$\frac{1}{4}$ - E$\frac{1}{2}$ - Section 24 <ul style="list-style-type: none"> - W$\frac{1}{2}$ of the W$\frac{1}{2}$ - Section 25 <ul style="list-style-type: none"> - W$\frac{1}{2}$ of the W$\frac{1}{2}$ - Section 27 <ul style="list-style-type: none"> - W$\frac{1}{2}$ - Section 34 <ul style="list-style-type: none"> - W$\frac{1}{2}$ - Section 35 <ul style="list-style-type: none"> - E$\frac{1}{2}$ - Section 36 <ul style="list-style-type: none"> - W$\frac{1}{2}$ of the W$\frac{1}{2}$ 	VOCs	Contact DNR Northeast Region Office for <u>required</u> approval
Manitowoc 10/1/93 Area 20	Town of Kossuth (<i>Francis Creek Area: Sinkholes & Farm Drainage Wells</i>) T20N, R23E <ul style="list-style-type: none"> - Section 16 <ul style="list-style-type: none"> - S$\frac{1}{2}$ of the SW$\frac{1}{4}$ - Section 17 <ul style="list-style-type: none"> - S$\frac{1}{2}$ of the S$\frac{1}{2}$ - Section 18 <ul style="list-style-type: none"> - S$\frac{1}{2}$ of the SE$\frac{1}{4}$ - Section 19 <ul style="list-style-type: none"> - E$\frac{1}{2}$ - Section 20 <ul style="list-style-type: none"> - Entire section - Section 21 <ul style="list-style-type: none"> - W$\frac{1}{2}$ - Section 28 <ul style="list-style-type: none"> - W$\frac{1}{2}$ - Section 29 <ul style="list-style-type: none"> - Entire section - Section 30 <ul style="list-style-type: none"> - E$\frac{1}{2}$ - Section 32 <ul style="list-style-type: none"> - N$\frac{1}{2}$ - Section 33 <ul style="list-style-type: none"> - NW$\frac{1}{4}$ 	Bacteria	Contact DNR Northeast Region Office for <u>required</u> casing depth.

ATTACHMENT D

Technical Memorandum

Date: July 17, 2009
To: LSRG
cc: Kris Krause
From: John Rice
Project No.: 00-03458.43
Subject: LTR Special Casing Assessment

This memo has been prepared in response to a request by the United States Environmental Protection Agency (USEPA) and the Wisconsin Department of Natural Resources (WDNR) to perform an assessment of the Wis. Admin. Code s. NR 812.09(4)(f) special casing requirements for groundwater extraction wells, ("wells") constructed or reconstructed in the vicinity of the Lemberger Superfund Sites ("the Sites"). This request was initiated when the Institutional Control (IC) Plan was being updated for the Sites. The Lemberger Sites Remediation Group (LSRG) has been monitoring groundwater and residential wells in this area for over ten years and in that time there has not been a confirmed detection of CVOCs. Nevertheless, in light of new data regarding the vertical profile of the contaminated groundwater plume that was collected when the LSRG constructed additional deeper monitoring wells in the vicinity of existing monitoring wells RM-7XD and RM-208D, the LSRG agreed that it would reevaluate the WDNR's special casing area designations .

Figure 1 shows the two Lemberger Sites and the current locations of the NR 812.09(4)(f) designated special casing areas. Note that in addition to the designated special casing areas, WDNR regulations prohibit any activity on the inactive waste disposal areas, including construction or disturbance of the surface, without WDNR approval, see NR 506.085 (1)-(3), and a WDNR variance is required to construct any well within 1200 feet of either landfill. See NR 812.10(2). These areas are also shown on Figure 1. The NR 812.09 "special casing area" in the vicinity of the Sites, Special Casing Areas No. 18/19, require either (1) WDNR contact before a well may be constructed or reconstructed, or (2) casing set to a depth of at least 250 feet below ground surface.

This memorandum will assess whether this 250 foot casing requirement is sufficient to protect human health from contamination that originates from the remaining waste at the LTR Site.. In order to perform this assessment, RMT developed a numerical model that was used to simulate the capture zone of a range of potential long-term extraction rates from high-end residential usage (10 gpm) up to high capacity (69.5 gpm). Note that all high capacity wells require WDNR approval per NR 812.09(4)(a).

Model Development

In order to perform this evaluation, RMT developed a numerical model to determine the three-dimensional capture zone that could be developed from pumping a well at various rates. We used the Visual MODFLOW Pro version 4, developed by Schlumberger Water Services, which is an implementation of the MODFLOW (MacDonald, M.G. and A.W. Harbaugh, 1988) model developed by the United States Geological Survey (USGS).

RMT developed this numerical model specifically to assess the effectiveness of the special casing requirements down gradient from the LTR, which require that new wells be cased to a depth of 250 feet below ground surface. This model required sufficient horizontal and vertical discretization to assess the three-dimensional capture zone of wells. The model used variable grid spacing that ranged between 10 feet and 100 feet, with the smallest grid spacing around the well. The horizontal grid spacing is shown in Figure 2. The layers also had variable vertical spacing that ranged between 5 and 25 feet. The vertical model discretization is shown in Figure 3.

The upper three model layers (total thickness of 15 feet) of the model represented the Lower Groundwater Unit (LGU). For the LGU, RMT used a uniform horizontal hydraulic conductivity of 245 ft/day (8.6×10^{-2} cm/sec) and a vertical hydraulic conductivity of 24.5 ft/day (8.6×10^{-3} cm/sec). This is a reasonable value of hydraulic conductivity based on slug tests performed in the LGU and based on published estimates for clean sand (Freeze and Cherry, 1979). This value also corresponds to ten times the hydraulic conductivity of the bedrock unit, as discussed below.

The lower 17 layers (total thickness of 375 feet) of the model represented the bedrock aquifer. RMT used a uniform horizontal hydraulic conductivity of 24.5 ft/day (8.6×10^{-3} cm/sec) and a vertical hydraulic conductivity of 2.45 ft/day (8.6×10^{-4} cm/sec). The hydraulic conductivity of the bedrock is based on pumping tests performed at EW-1D (Malcolm Pirnie, 1997). Reasonable ratios of K_v/K_h range between 0.1 and 0.01, based on personal communication with Ken Bradberry and on modeling of this geologic formation (*i.e.* the Niagara Dolomite) performed as part of a deep tunnel project (USGS, 2004). The model parameters are illustrated in Figure 3.

Model Boundary Conditions

Model boundary conditions were set to correspond to physical hydrologic features or they were set sufficiently distant from the hypothetical pumping well so that the boundaries did not adversely affect the model simulations. Figures 2 and 3 present the horizontal and vertical model boundaries, respectively. The northern boundary condition was set as a constant head (700 feet) roughly corresponding to the Branch River, while the southern boundary was set as a constant head (799 feet) to reproduce the natural hydraulic gradient across the site. The east and west boundaries were set as no-flow boundaries at a distance that would not affect the simulated capture zone. The upper boundary was set at the approximate elevation of the top of the lower granular unit (LGU), which corresponds to the base of the clay confining unit (CU). The bottom boundary condition corresponds to roughly to the top of the Maquoketa Shale (personal communication with Ken Bradbury, 2009), which forms the low-permeability base of the dolomite bedrock aquifer.

Technical Memorandum

Hypothetical Well

A hypothetical well was placed in the approximate center of the model domain, where the grid spacing is the most dense and where the model boundary conditions will not affect the results. The pumping was simulated in layer 13, screened between 575 feet and 550 feet National Geodetic Vertical Datum (NGVD). This interval corresponds to the well being screened approximately 250 feet to 275 feet below ground surface, assuming the ground surface of 825 feet NGVD. The location of the hypothetical well is shown in plan and cross section in Figures 2 and 3, respectively.

The model was simulated to steady state, which results in the largest capture zone being developed for a particular pumping rate. Two extraction rates were evaluated in model simulations. The first pumping rate that was simulated is 10 gpm. As simulated, this pumping rate corresponds to 14,400 gallons per day (gpd) pumped continuously. For comparison, a high-end water consumption rate for residential use is approximately 200 gpd (Metcalf and Eddy, 1979) or 1,200 gpd for a family of 6. The second pumping rate that was simulated was 69.5 gpm or approximately 100,000 gpd. This is the flow rate threshold at which the high capacity well regulations would take effect. This pumping rate was included to evaluate the highest extraction rate that could fall outside the high capacity well regulation that are subject to WDNR permitting requirements.

Model Scenarios

In addition to the base condition with no pumping, 4 pumping scenarios were simulated using different pumping rates and different vertical hydraulic conductivity values.

■ <i>Base Condition:</i>	No pumping	$K_V/K_H = 0.1$
■ <i>Scenario 1:</i>	$Q = 10$ gpm	$K_V/K_H = 0.1$
■ <i>Scenario 2:</i>	$Q = 10$ gpm	$K_V/K_H = 0.01$
■ <i>Scenario 3:</i>	$Q = 69.5$ gpm	$K_V/K_H = 0.1$
■ <i>Scenario 4:</i>	$Q = 69.5$ gpm	$K_V/K_H = 0.01$

Model Simulation Results

The results of model simulations are presented in Figures 4 through 7. These figures illustrate the vertical capture zone of a hypothetical well under the different pumping rates and K_V/K_H ratios presented above. These figures also illustrate the vertical extent of the PAL exceedences for 1,1,1 trichloroethane and 1,1,1 TCA and trichloroethene (TCE), as defined by the most recent groundwater data (RMT, 2008).

Figure 4 shows the results of the model simulation of continuous pumping at a rate of 10 gpm (14,400 gpd) with a conservative K_V/K_H equal 0.1. Under these conditions, the groundwater flow pathlines from the base of the plume (at the PAL level) would not be captured by the well. Decreasing the K_V/K_H to 0.01 (Figure 5) decreases the vertical extent of the capture zone of the well.

Technical Memorandum

Figure 6 shows that pumping at a rate of 69.5 gpm (100,000 gpd) with a K_v/K_H equal to 0.1 will draw a substantial portion of the vertical profile of the plume into the well. However, with a K_v/K_H equal to 0.01 (Figure 7) the capture zone of the well does not extend upward to the limits of the PAL.

Conclusions and Recommendations

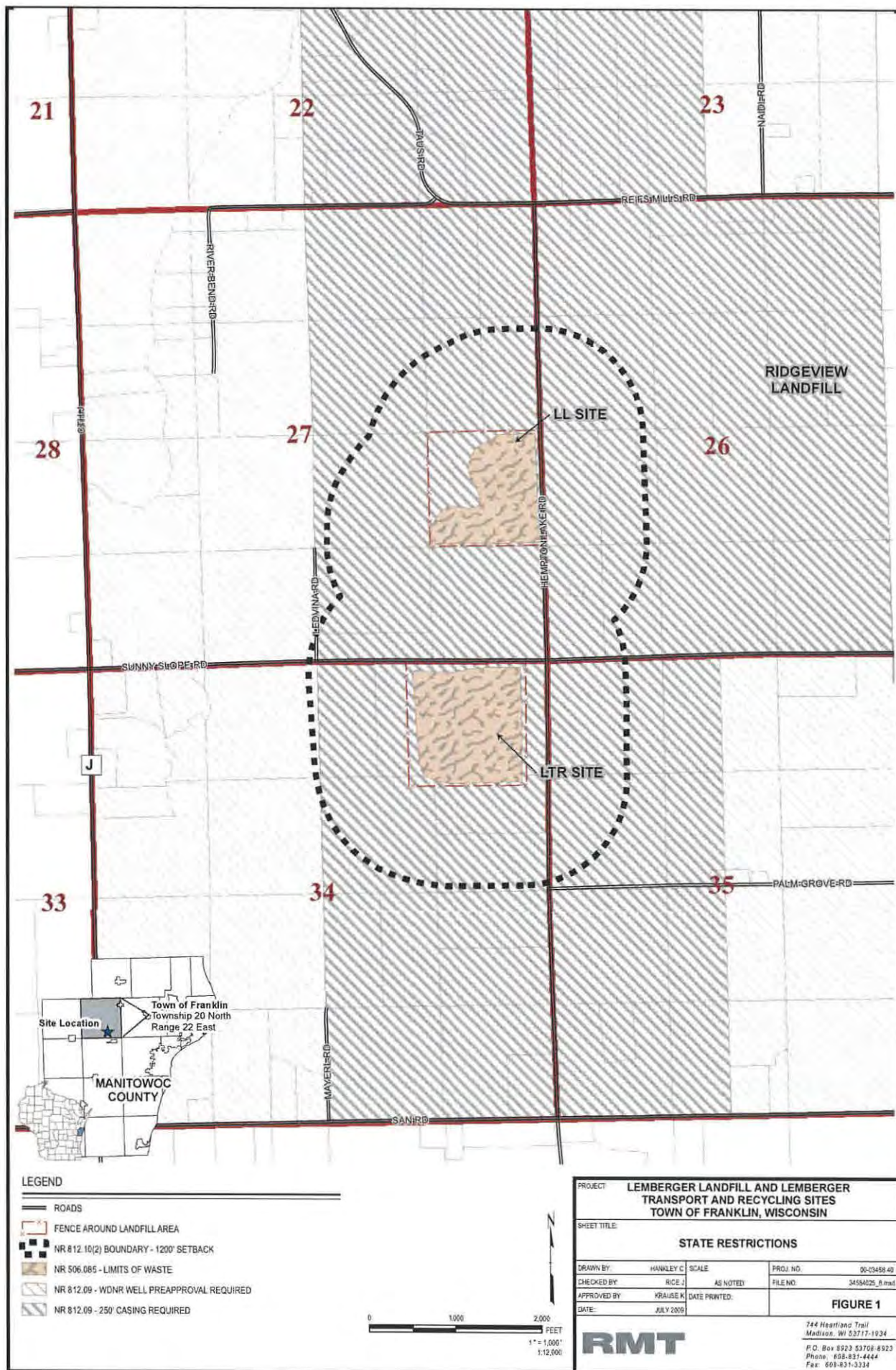
The results of groundwater modeling show that the 250-foot special casing requirement provides a sufficient level of protectiveness everywhere within the existing NR 812 designated special casing area No. 18/19 for typical and even very high pumping rates associated with residential well installations.

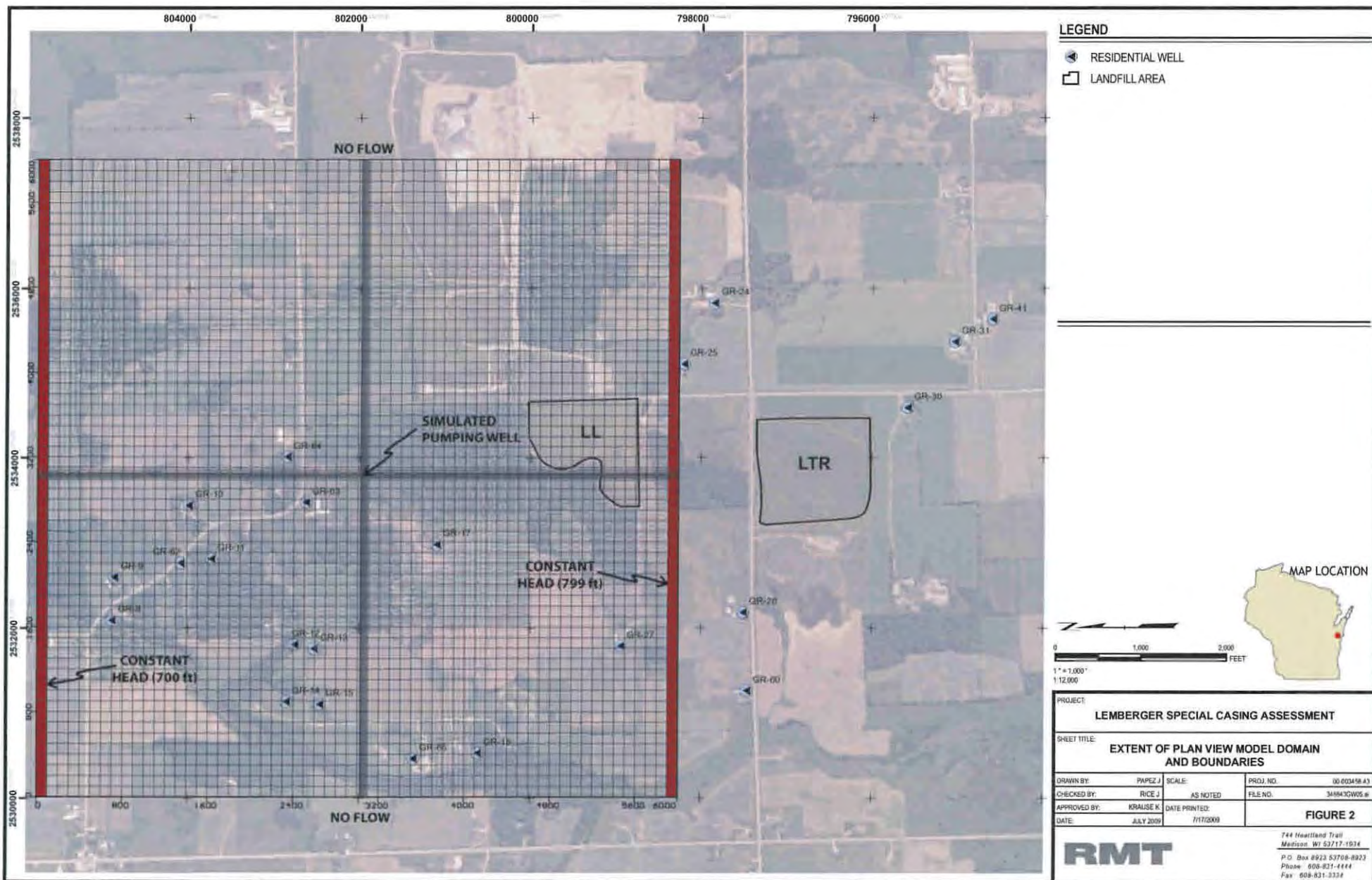
Wells that are located within the estimated Enforcement Standard plume that are intended to pump at rates that are much higher than the rates associated with residential well use, however, have the potential to draw the plume down into the well screen if the well is constructed with a screen interval at 250 feet. However, the horizontal footprint of the enforcement standard plume is contained within the area where no wells of any kind may be constructed without a WDNR variance. *See* NR 812.10(2). Accordingly, no such well can be constructed without prior WDNR review and approval. RMT notes that WDNR could safely grant a variance under NR 812 for a higher capacity well located within the estimated enforcement standard plume if the well was required to be screened below the Maquoketa Shale.

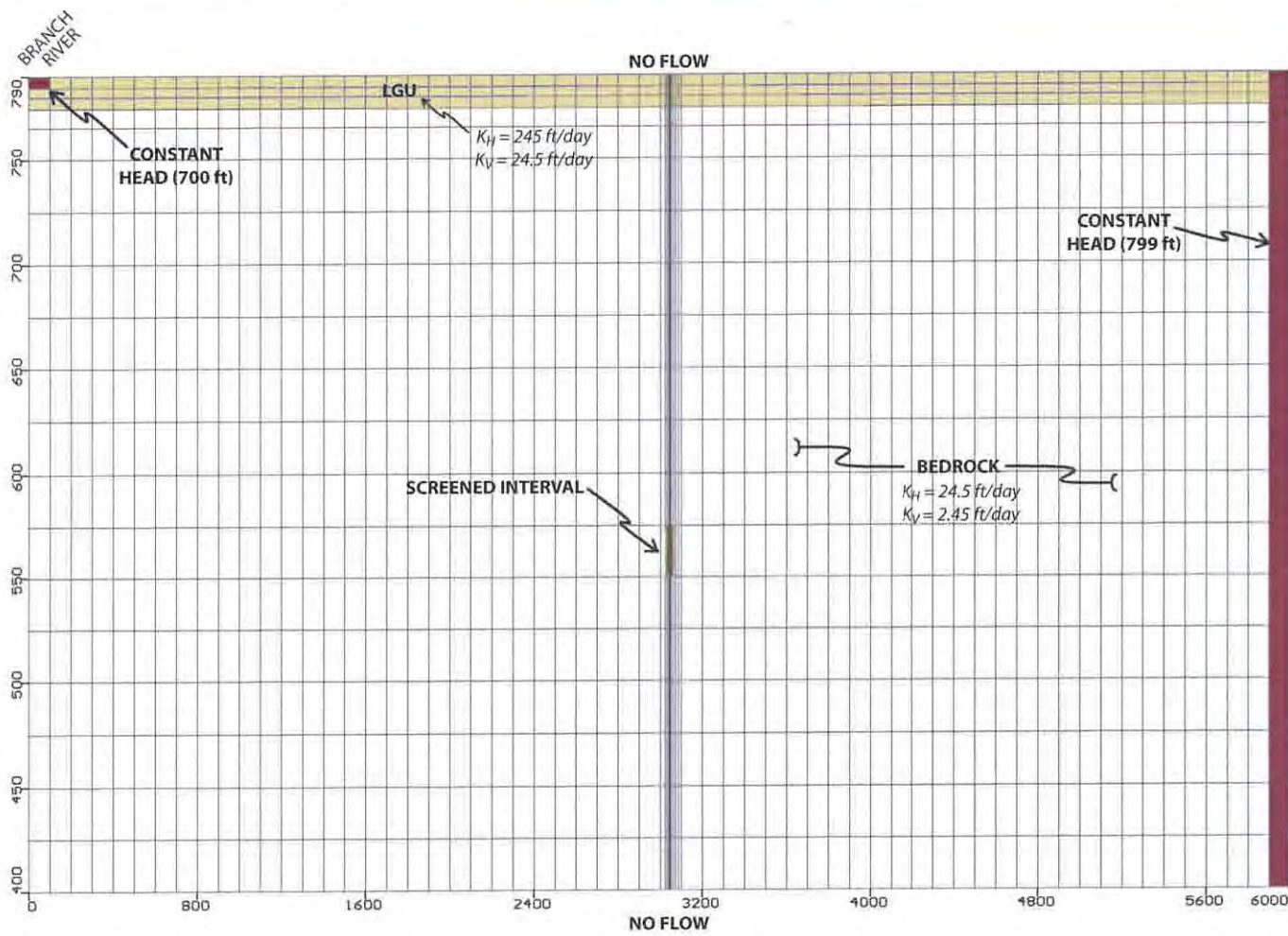
Finally, a simple measure that WDNR could take to cover all contingencies would be to require WDNR approval before constructing or reconstructing a well in all of the currently designated special casing area No. 18/19, rather than only in the the areas immediately surrounding and furthest distant from the waste disposal areas.


References

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- Malcolm Pirnie, 1997. Remedial Action Implementation Report. April 1997.
- Metcalf & Eddy, Inc., 1979. Water Resources Engineering – Treatment/Disposal/Reuse. McGraw-Hill Book Company, New York.
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- USGS, 2004. C.P. Dunning, D.T. Feinstein, R.J. Hunt, and J.T. Krohelski. Simulation of Ground-Water Flow, Surface Water Flow, and a Deep Sewer Tunnel System in the Menomonee Valley, Milwaukee, Wisconsin. USGS Scientific Investigations Report 2004-5031.

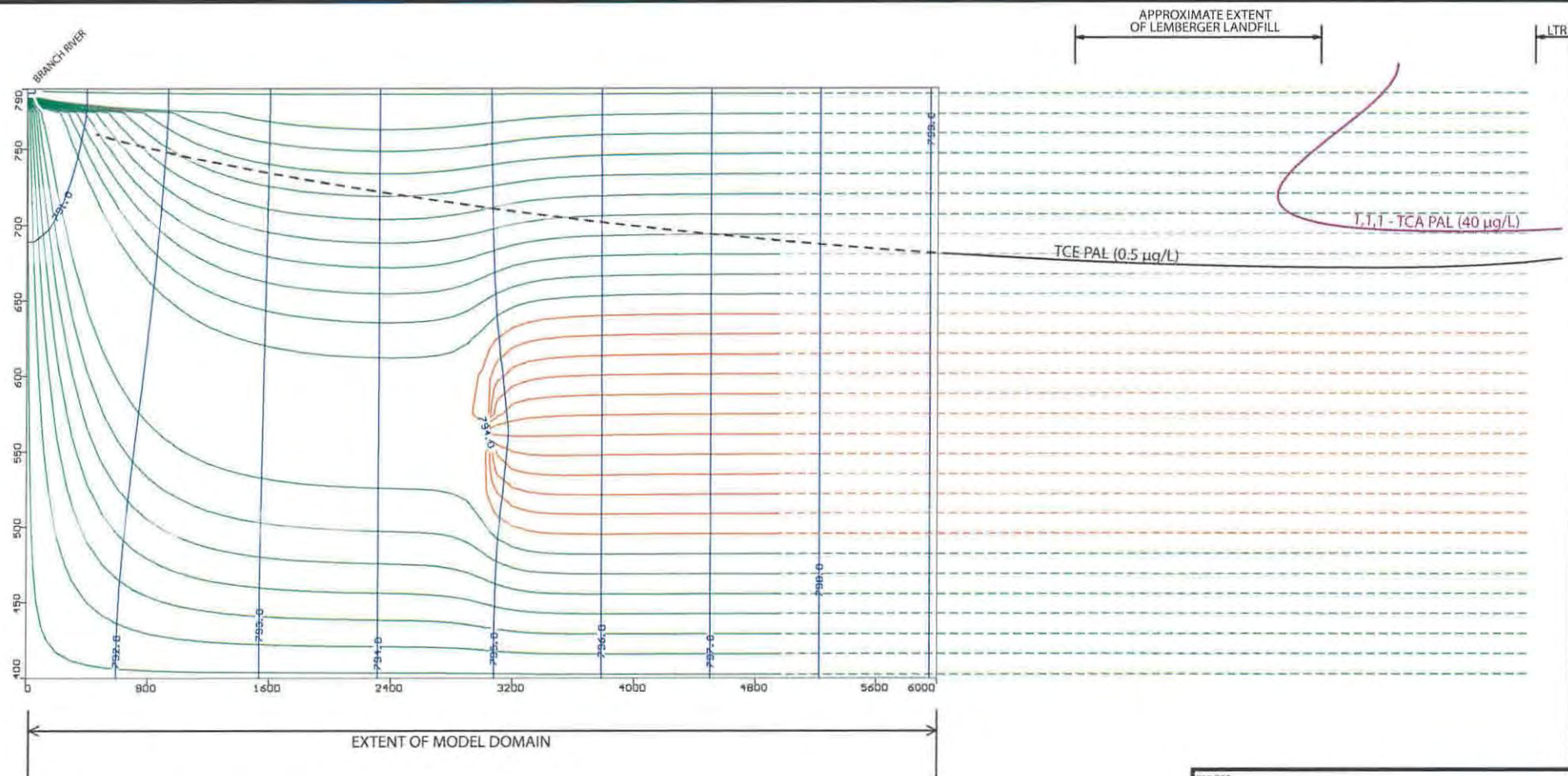






PROJECT			
LEMBERGER SPECIAL CASING ASSESSMENT			
SHEET TITLE			
EXTENT OF PROFILE MODEL DOMAIN AND BOUNDARIES			
DRAWN BY	PAPEZ, J.	SCALE	PROJ. NO.
CHECKED BY	PRICE, J.	AS NOTED	FILE NO.
APPROVED BY	KRAUSE, K.	DATE PRINTED	FIGURE 3
DATE	JULY 2008	01/7/2008	
		744 Highland Trail	
		Madison, WI 53717-1934	
		P.O. Box 8923 53708-8923	
		Phone 608-831-4444	
		Fax 608-831-3334	

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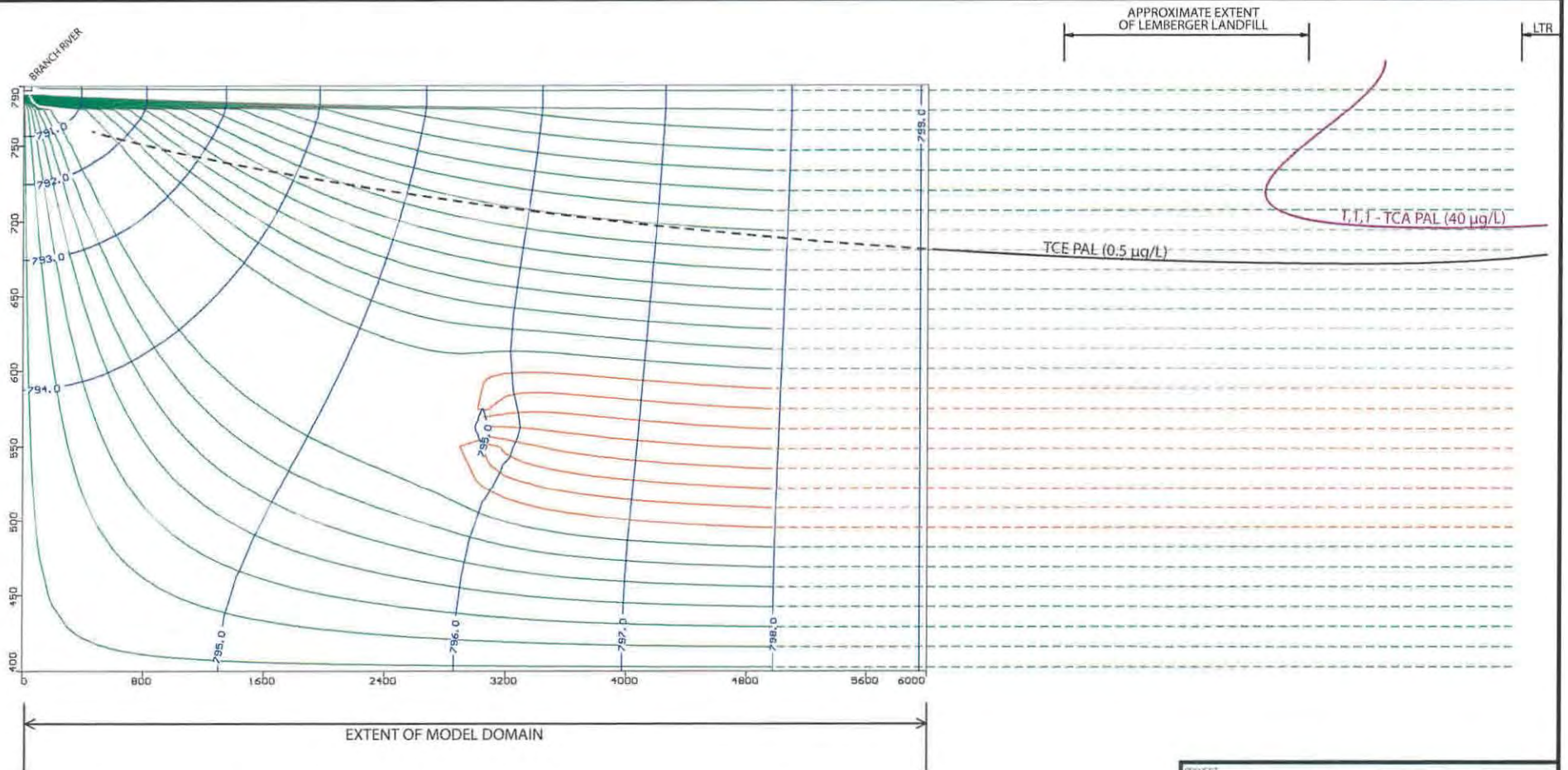
MODEL SIMULATION: SCENARIO 1

$K_H / K_V = 0.1$

$Q = 10 \text{ gpm}$

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PROJECT			
LEMBERGER SPECIAL CASING ASSESSMENT			
SHEET TITLE			
SCENARIO 1 SIMULATION - CROSS SECTION POTENTIOMETRIC CONTOURS AND PATHLINES			
DRAWN BY	PAPEZ J	SCALE	AS NOTED
CHECKED BY	RICE J	FILE NO	06/00458 43
APPROVED BY	KRAUSE K	DATE PRINTED	7/17/2009
DATE	JUL 7 2009	FIGURE 4	
RMT 744 Heartland Trail Madison, WI 53717-1934 P.O. Box 8923 53708-8923 Phone: 608-831-4444 Fax: 608-831-5374			



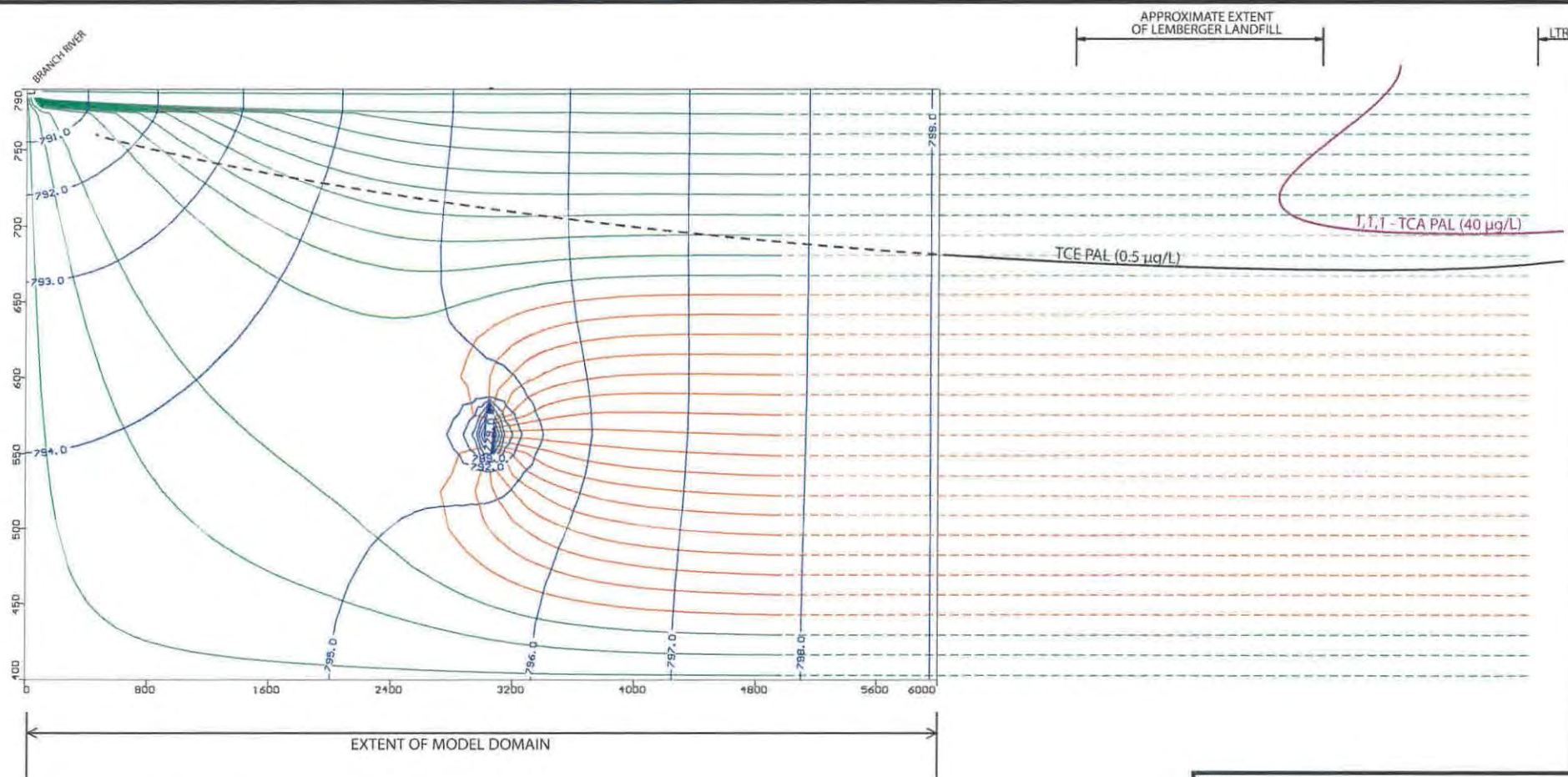
MODEL SIMULATION: SCENARIO 2

$K_H / K_V = 0.01$

$Q = 10 \text{ gpm}$

PROJECT			
LEMBERGER SPECIAL CASING ASSESSMENT			
SHEET TITLE			
SCENARIO 2 SIMULATION - CROSS SECTION POTENTIOMETRIC CONTOURS AND PATHLINES			
DRAWN BY	PAPEZ, J.	SCALE	1" = 100'
CHECKED BY	RICE, J.	AS NOTED	FILE NO.
APPROVED BY	KHASE, K.	DATE PREPARED	3/17/2009
DATE	3/17/2009	FIGURE 5	
RMT 744 Heartland Trail Madison, WI 53717-1934 P.O. Box 8921 53708-8921 Phone 608-831-4444 Fax 608-831-3334			

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MODEL SIMULATION: SCENARIO 4

$K_H / K_V = 0.01$

$Q = 69.5 \text{ gpm}$

PROJECT			
LEMBERGER SPECIAL CASING ASSESSMENT			
SHEET TITLE			
SCENARIO 4 SIMULATION - CROSS SECTION POTENTIOMETRIC CONTOURS AND PATHLINES			
DRAWN BY	PAPEZ J	SCALE	FILE NO.
CHECKED BY	RICE J	AS NOTED	34584/GW01.g
APPROVED BY	KRAUSE K	DATE PRINTED	7/17/2009
DATE	AUG 2009		
			FIGURE 7
RMT 744 Heartland Trail Madison, WI 53717-1934 P.O. Box 8973 53708-8973 Phone 608-831-4444 Fax 608-831-3234			

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ATTACHMENT E

UNIFIED DEVELOPMENT ORDINANCE TOWN OF FRANKLIN

Adopted by the Town Board as of October 14, 2008

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SECTION 5-3 EAG EXCLUSIVE AGRICULTURAL DISTRICT

5.31 PURPOSE

The intent of this district is to maintain highly productive agricultural lands in food and fiber production by effectively limiting encroachment of non-agricultural development, minimizing land use conflicts among incompatible uses and minimizing public service and facility costs normally associated with non-agricultural development.

The guiding principles of land in the EAG District are as follows:

- a. Consistency with the Town of Franklin Comprehensive Plan
- b. If applicable, a license for any new Livestock Facility as required in Chapter 28 of the Manitowoc County Livestock Facility Licensing Ordinance.
- c. Requirements of the state runoff law for farms (NR 151, Wis. Adm. Code, ATCP 50)
- d. Compliance with standards contained in Chapter 91, Wisconsin Statutes to permit eligible landowner to receive tax credits for farming and includes lands currently cropped or pastured on NRCS soil capability classes 1, 2 and 3 that generally correspond with the Manitowoc County Agricultural Preservation Plan in effect.
- e. All uses and buildings in the EAG District are to be dedicated to agricultural uses, or are "uses consistent with agricultural uses", defined as
 - I. any activity that will not convert land that has been devoted primarily to agricultural use,
 - II. the activity will not limit the surrounding land's potential for agricultural use,
 - III. the activity will not conflict with agricultural operations on the land subject to a farmland preservation agreement,
 - IV. the activity will not conflict with agricultural operations on other properties.

5.32 PERMITTED PRINCIPAL USES AND STRUCTURES

Permitted uses in the EAG zone are as follows:

- a. Agricultural uses, as defined in Section 3-2 (2)(Definition of Terms)
- b. Residences that have a use consistent with agricultural uses and that are occupied by any of the following:
 - I. An owner of the parcel.
 - II. A person who, or a family at least one adult member of which, earns the majority of his or her gross income from conducting the farm operations.
 - III. A parent or child of an owner who conducts the majority of the farm operations.
 - IV. A parent or child of an owner who resides on the parcel and who previously conducted the majority of the farm operations.
- c. Notwithstanding any provision in this ordinance to the contrary, a residence existing as of November 7, 1983, which does not conform to the requirements of paragraph 5.32 b, may be continued as a nonconforming residential use. Such existing residence may be altered, repaired or rebuilt if destroyed, but is subject to setback, width and other dimensional requirements of the EAG District.
- d. Use Consistent with Agriculture Uses, as defined in 3-2 (2) of this ordinance.

5.33 PERMITTED ACCESSORY USES

The following accessory uses are permitted if located on the same lot with the permitted use:

- a. Signage (see 7-3 for regulations)
- b. Customary home occupation or professional offices conducted by the resident only, provided there is no external evidence of such use, except an announcement or professional sign not exceeding 3 square feet in area.
- c. Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use.
- d. Roadside stands for the sale of farm products produced on the farm.
- e. Use Consistent with Agriculture Uses, as defined in 3-2 (2) of this ordinance.

5.34 CONDITIONAL USES

The following uses are permitted subject to issuance of a Conditional Use permit (Section 10):

- a. Agricultural Research and Development
- b. Dog Kennels
- c. Deer, elk, or bison farms for the purpose of meat production
- d. Commercial Riding Stable boarding 3 or more horses
- e. Farm Consolidation which is any separation of farm residences or structures from the larger farm and parcel and meets all of the following requirements:
 - I. The separation is for the purpose of farm consolidation
 - II. The residence or structures existed prior to the adoption of the ordinance
 - III. The separated parcel is no larger than reasonably necessary to accommodate the proposed use.
- f. Farm family business (s. 91.75(8) Wis. Stats.)
- g. The sale and service of machinery used in agricultural production.
- h. Facilities used for centralized agricultural bulk collection and storage.
- i. Distribution of agricultural products to wholesale and retail markets.
- j. The storage and sale of seed, feed, fertilizer and other products essential to agricultural production.
- k. Facilities used to provide veterinarian services for livestock.
- l. Gas or electric utility uses, not requiring authorization under s.196.491 (3) Wis. Stats., or governmental uses which are compatible with the purposes of this District, do not conflict with, and are consistent with agricultural uses, and are found necessary in light of alternative locations available for such uses.

- m. Energy producing facilities in conjunction with a farm operation and utilizing farm products or by-products.
- n. Non-metallic mining within limits of s. 91.75 (9) Wis. Stats. (subject to Chapter 21, Manitowoc Non-Metallic Mining Operations Ordinance)
- o. Wireless Communication Facilities but not radio or television communication towers.

5.35 DIMENSIONAL AND IMPROVEMENT REQUIREMENTS

Minimum contiguous land area in the EAG district shall be 35 acres. Lot area for one additional farm-related dwelling shall be a minimum of 1 acre with a lot width of at least 250 feet. An existing platted lot that was legally subdivided prior to the adoption of any Franklin Zoning regulations (November 7, 1983) may be issued a permit for a residence, provided the residence is consistent with agricultural uses and the lot can gain access under the Town's Access Control regulations (Section 14) of this ordinance. All structures and improvements will need to be "consistent with agricultural use" as defined in 91.01 (10), Wis. Stats.

1. Residential Structures:

- a. Front yard setback (See Definition section)
- b. Minimum Lot Width: 250 feet
- c. Side Yards: Minimum of 50 feet per side
- d. Rear Yards: Minimum of 50 feet
- e. Maximum height shall be 35 feet

2. Livestock and other farm related building setbacks, according to the Manitowoc County Livestock Facility Licensing Ordinance (a. through c.):

- a. Livestock structures must be located a minimum of 100 feet from the property line or public right-of-way if the livestock facility will have 750 or more, but less than 1,000 animal units, 200 feet from the property line if the livestock facility will have 1,000 or more animal units, and 150 feet from a public road right-of-way if the livestock facility will have 1,000 or more animal units.
- b. Waste storage structures must be at least 350 feet from any property line or a public road right-of-way.
- c. A setback requirement for livestock facilities does not prevent the use or expansion of an existing livestock structure that is located within the setback area, provided the facility existed prior to the effective date of this ordinance (November 7, 1983). However, such nonconforming structure cannot be expanded closer to any property line or street setback line.
- d. Maximum height shall be 60 feet. Silos, grain elevators, and antennas shall be exempt from the height regulations.

5.36 OFF-STREET PARKING REQUIREMENTS

Two spaces for each residential dwelling unit. See Section 7-4 for other parking regulations.

5.37 OTHER REGULATIONS

Spreading liquid manure must be properly applied in the right conditions and in proper time intervals, as specified in the Manitowoc County Animal Waste Ordinance (Chapter 19). This ordinance is administered through the Manitowoc County Soil and Water Conservation Department (920-683-4183). The approved county application for manure spreading should be filed with the Town of Franklin Clerk, and available for public review at the Town Hall.

SECTION 5-4 AG GENERAL AGRICULTURAL

5.41 PURPOSE

To establish and preserve areas for agricultural, low density residential and outdoor recreation uses without permitting an intensity of development which would require the provision of urban facilities and services. Creation of a new parcel for the purpose of building a new residential structure in the AG district, after adoption of this ordinance, will be prohibited. A petitioner who wants to create a new residential parcel will need to rezone the land to residential classification.

5.42 PERMITTED PRINCIPAL USES AND STRUCTURES

- a. Agricultural uses, as defined in Section 3-2 (2)(Definition of Terms)
- b. Feedlots shall not be located closer than 1,000 feet to an established residential district, and other agricultural uses which are not conducive to nearby urban development due to odor, noise, health considerations or other intrusions upon adjoining property
- c. Single-family dwellings that exist at the adoption date of this ordinance, but no additional creation of lots to build new single family dwellings.

5.43 PERMITTED ACCESSORY USES

The following accessory uses are permitted if located on the same lot with the permitted use:

- a. Signage (see 7-3 for regulations)
- b. Customary home occupation or professional offices conducted by the resident only, provided that there be no external evidence of such use except an announcement or professional sign not exceeding 3 square feet in area.
- c. Private garage and roadside stands for the sale of farm products.

5.44 CONDITIONAL USES

The following uses are permitted on issuance of a Conditional Use permit (Section 10).

- a. Utility uses not requiring authorizations under SS 196.491 (3)
- b. Horse Riding stables and equestrian trails for personal use, subject to a minimum of 2.5 acres of land for one horse, and an additional acre and a half for each additional horse.
- c. Governmental uses such as fire stations, highway storage garage, sewage treatment plants, schools, parks, airports and landing strips.
- d. Churches, schools, and cemeteries.
- e. The sale and service of machinery used in agricultural production.
- f. Manufactured homes.
- g. Dog Kennels
- h. Two family dwellings within existing residential structures only.

- i. Communication Tower, Commercial
- j. Non-metallic Mining (subject to Chapter 21, Manitowoc Non-Metallic Mining Operations Ordinance)

5.45 DIMENSIONAL REQUIREMENTS

- a. Legal conforming minimum lot area for one-family units must be two (2) to five (5) acres for parcels created prior to the adoption date of this ordinance, and five (5) acres or more for parcels created after the adoption date of this ordinance.
- b. Minimum lot width: 250 feet.
- c. Front yard setback (See Definition section)
- d. Side Yards: Minimum of 50 feet per side
- e. Rear Yards: Minimum of 50 feet
- f. Maximum height for a residential structure: 35 feet.
- g. Maximum height for a farm structure: 60 feet.
- h. Silos, grain elevators, towers and antennas are exempt from height regulations.

5.46 OFF-STREET PARKING REQUIREMENTS

Two spaces for each residential dwelling unit. See Section 7-4 for other parking regulations.

SECTION 5-8 LF LANDFILL OVERLAY DISTRICT

5.81 PURPOSE

The purpose of this district is to provide a means of properly regulating and reclaiming landfill sites which are located primarily by their geological characteristics rather than to a planning and zoning process. The Landfill District is only allowed to overlay Ag zoned land.

5.82 PERMITTED USES

Sanitary landfill sites that are presently in existence.

5.83 BASIC DISTRICT STANDARDS

LF District standards are based on the underlying district, unless more restrictive standards are established in a Conditional Use Approval. Also, excavations or fill areas within 200 feet from any right-of-way or property line shall not be permitted unless the Plan Commission recommends and Town Board determines that the operational plans adequately provide for:

- a. Safety of abutting land uses and for safe ingress to, egress from and traffic flow past the site.
- b. Aesthetic screening from abutting properties.
- c. Dust and debris control from the operation.
- d. Staging of the operation to produce a minimal time frame between commencing of operations and restoration within this 200 foot area.

The Conditional Use Permit shall be in effect for a period not to exceed two (2) years and may be renewed upon application for a period not to exceed two (2) years. Modifications or additional conditions may be imposed upon application for renewal.

5.84 OPERATIONAL REQUIREMENTS

- a. All designated and licensed landfill operations in the Town shall be fenced with approved fencing material or other suitable barrier material for the protection of the public and adjoining land owners.
- b. Machinery, roads, and equipment used in the landfill operation shall be constructed, maintained and operated in such a manner as to minimize dust, noise and vibration and debris.
- c. Planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Plan Commission.
- d. Hours of operation may be established.

5.85 RESTORATIVE REQUIREMENTS

The owner or operator shall prior to the issuance of a permit submit to the Plan Commission a plan for such restoration in the form of the following:

- a. A physical restoration plan showing the proposed contours after restoration, (no greater than five (5) foot intervals) plantings and other special features of restoration, and the method by which such restoration is to be accomplished.
- b. A bond, certified check, or other financial guarantee in an amount sufficient to secure the performance of the restoration agreement. Restoration shall proceed as soon as practical after exhaustion of the site.

- c. At any stage during the restoration the plan may be modified by mutual agreement between Town and the owner or the operator. When there is any backfilling with material other than soil, all material used and method of filling shall have prior DNR approval. In any case, the finished grade of the restored area except for rock faces, outcroppings, water bodies, or areas of proposed buildings or paving construction, shall be of sufficient depth of earth to support plant growth.
- d. Within one year after the cessation of the operation, all temporary structures (excepting fences), equipment, stock piles, rubble heaps, or other debris shall be removed or backfilled into the landfill so as to leave the premise in a neat and orderly condition.

5.86 EXISTING OPERATIONS

Any issues (other than zoning issues) between the Town and Landfill operator must be brought before the Town of Franklin Landfill Committee. This committee, which came into being when the contract was signed with the present landfill operator, oversees operational aspects and makes recommendations to the Town Board for their action.

5.87 CONDITIONAL USES

The following uses are permitted on issuance of a Conditional Use permit (Section 10).

- a. Extension of a legally existing landfill site operation.
- b. New landfills, solid waste management facilities, recycling centers, and soil extraction or scraping for purposes of obtaining fill material for such large scale operations as landfill sealing.

5.88 OFF-STREET PARKING REQUIREMENTS

See Section 7-4 for other parking regulations.

ATTACHMENT F

July 13, 2009

ATTORNEYS AT LAW

VEREX PLAZA
150 EAST GILMAN STREET
MADISON, WI 53703-1481
POST OFFICE BOX 1497
MADISON, WI 53701-1497
608.257.5035 TEL
608.258.4258 FAX
foley.com

WRITER'S DIRECT LINE
608.258.4276
dclark@foley.com EMAIL

CLIENT/MATTER NUMBER
080261-0105

John Steimle
Town of Franklin Plan Commission Chair and
Zoning Administrator
11308 Reifs Mills Road
Whitelaw, WI 54247

Re: Request for Notice of Plan Commission Activities Involving Sections 22, 27 and 34 in
Township 20 North, Range 22 East.

Dear Mr. Steimle :

As we have discussed, my clients (the Lemberger Sites Remediation Group or "LSRG") are funding the ongoing clean up of environmental contamination associated with two Superfund sites located in the Town of Franklin. Those sites are known to the United States Environmental Protection Agency and the Wisconsin Department of Natural Resources as the Lemberger Landfill and the Lemberger Transport and Recycling Sites. As part of the process, the U.S. EPA has asked the LSRG to monitor land use, development and zoning in the area potentially impacted by contamination from the two sites. That area includes the area to the south and/or east of the Branch River in Sections 22, 27 and 34 in Township 20 North, Range 22 East. Although only a small portion of this area is impacted by contamination, out of an abundance of caution, if possible the LSRG would appreciate being notified of any Plan Commission activities that might potentially impact those sections of T 20 N, R 22 East. The LSRG will cooperate with the Plan Commission and provide whatever information we have to assist the Commission in its activities.

Recently, for example, in response to EPA's request, the LSRG reviewed the Town's May 15, 2007 Comprehensive Plan and contacted Martenson & Eisele, Inc., to provide updated information regarding the precise location of one of the Superfund sites so that the site would be accurately shown on the Town's Land Use Plan map.



FOLEY & LARDNER LLP

John Steimle

July 13, 2009

Page 2

I appreciate your consideration of this request and if there is anything we can do to simplify the request or make the notification less trouble, please let me know.

Very truly yours,

FOLEY & LARDNER LLP

A handwritten signature in black ink, appearing to read 'Douglas B. Clark', written over the printed name.

Douglas B. Clark

Cc: LSRG
Kris Krause
Mark Brooks

FOLEY

FOLEY & LARDNER LLP

July 13, 2009

ATTORNEYS AT LAW

VEREX PLAZA
150 EAST GILMAN STREET
MADISON, WI 53703-1481
POST OFFICE BOX 1497
MADISON, WI 53701 1497
608.257.5035 TEL
608.258.4258 FAX
foley.com

WRITER'S DIRECT LINE
608.258.4276
dclark@foley.com EMAIL

CLIENT/MATTER NUMBER
080261.0105

Warren Utecht
Vice President Planning Services
Martenson & Eisele, Inc.
1377 Midway Road
P.O. Box 449
Menasha, WI 54952-0449

John Steimle
Town of Franklin Plan Commission Chair and
Zoning Administrator
Town of Franklin
11308 Reifs Mills Road
Whitelaw, WI 54247

Re: Landfill Overlay District Designation for Lemberger Landfill and
Lemberger Transport & Recycling Superfund Sites

Gentlemen:


I have previously discussed with both of you the Lemberger Sites Remediation Group's ongoing interest in land use activities in the vicinity of the two superfund sites that are located in the Town of Franklin in sections 27 and 34 of Township 20 North, Range 22 East. I have contacted Mr. Utecht to correct the location of one of the superfund sites, i.e. the Lemberger Transport & Recycling Site in section 34, as shown on the current Land Use Map included in the Town's May 15, 2007 "Comprehensive Plan, 2007-2027."

In reviewing the Zoning Map (Map 2) included in the Comprehensive Plan, I noticed that the Ridgeview Landfill, owned and operated by Waste Management, is shown as zoned for "General Agriculture" but also is designated as a Landfill Overlay District. I wonder whether the two Lemberger superfund should not be similarly designated. They are both zoned "General Agriculture" but would be more correctly identified if their special status as landfills undergoing remediation was represented on the Zoning Map. Is there information that the LSRG could provide to the Town about the superfund sites or the footprint of the waste disposal areas within the sites that would assist in the reconsideration of these two superfund sites?

We look forward to your comments.

Very truly yours,

FOLEY & LARDNER LLP


Douglas B. Clark

Cc: LSRG
Kris Krause and Mark Brooks/RMT

BOSTON
BRUSSELS
CHICAGO
DETROIT

JACKSONVILLE
LOS ANGELES
MADISON
MIAMI

MILWAUKEE
NEW YORK
ORLANDO
SACRAMENTO

SAN DIEGO
SAN DIEGO/DEL MAR
SAN FRANCISCO
SHANGHAI

SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO
WASHINGTON D.C.

MADI_1984731.1

ATTACHMENT G(1)

Lemberger

Amended and Restated Global Access and Easement Agreement



Document Number

860130

AMENDED AND RESTATED
GLOBAL ACCESS AND
EASEMENT AGREEMENTRECEIPT# 4896
\$22.00 MISCSTATE OF WISCONSIN
MANITOWOC COUNTY
PRESTON JONES
REGISTER OF DEEDS
RECEIVED FOR RECORD

14 JUL 2000 12:46:09 PM

After recording, return to:

Attorney Douglas B. Clark

Foley & Lardner

P.O. Box 1497

Madison, Wisconsin 53701-1497 \$22.00

See attached Exhibit A

Parcel Identification Number(s)

This Amended and Restated Global Access and Easement Agreement (the "Agreement") is dated this 23rd day of June, 2000, and is between Kenneth J. Lemberger (the "Owner") and the Lemberger Sites Remediation Group ("LSRG"), whose members are the City of Manitowoc, Manitowoc Company, Manitowoc Public Utilities, Newell Company, Red Arrow Products Company, LLC, Invincible Metal Furniture Company, Inc., The Great Atlantic & Pacific Tea Company, Inc.

WHEREAS, the Owner owns several contiguous and non-contiguous parcels of property in Section 27 and Section 34, Township Number Twenty(20) North, Range Number Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin, more particularly described on the attached Exhibit A (collectively, the "Property").

The Property includes the Lemberger Landfill ("LL")¹ and the Lemberger Transport Recycling ("LTR")² Superfund sites located near the Village of Whitelaw, which

¹ The LL site is located in the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section Numbered Twenty-seven (27), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin.

² The LTR site is located in the East One-half (E1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin and the West One-half (W1/2) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin.



have been listed on the National Priority List under the Comprehensive Environmental Response, Compensation and Liability Act;

WHEREAS, the Owner and the LSRG previously executed a Global Access Agreement dated May 31, 1995 (the "Prior Agreement"), which prior Agreement specified the conditions upon which the LSRG was granted unrestricted, continuous and permanent access to the Property for itself, U.S. EPA, WDNR, and their contractors, consultants and representatives;

WHEREAS, pursuant to the Prior Agreement the LSRG has been investigating and remediating hazardous substance contamination at the LL and the LTR Sites (the "Remediation") under the direction of the United States Environmental Protection Agency ("U.S. EPA") and the Wisconsin Department of Natural Resources ("WDNR"), pursuant to Consent Decree No. 92-C-0583 (E.D. Wis. 1992) and Administrative Order by Consent No. V-W-93-C-196 (U.S. EPA Region V, 1993)(the "AOC");

WHEREAS, the Prior Agreement required that the LSRG perform certain restoration after the completion of the Remediation;

WHEREAS, the parties wish to amend and restate the Prior Agreement in its entirety in order to clarify the obligations of the parties with respect to Restoration and to put this Agreement in a recordable form.

NOW, THEREFORE, in consideration of mutual promises contained in this Agreement, the sufficiency of which is hereby expressly acknowledged, the Owner and the LSRG (hereinafter collectively the "Parties") hereby agree as follows:

1. Access. The Owner grants to the LSRG, U.S. EPA, WDNR, and their contractors, consultants and representatives a perpetual easement and access to the Property for the purpose of: (a) preparing for and conducting the Remediation, including but not limited to the construction, operation and maintenance of a groundwater treatment system, a portion of which may be located on the Property; (b) locating and excavating clay and other borrow materials from the Property,³ and (c) any other purpose deemed reasonably necessary by the LSRG, U.S. EPA and/or WDNR, pursuant to the Consent Decree and AOC. The LSRG shall attempt, but is not required, to give the Owner prior notice, written or otherwise, before entering onto the Property pursuant to this Agreement. The access and easement granted under this Agreement shall be unrestricted, continuous and permanent, shall run with the land, and shall be binding upon and inure to the benefit of the Parties hereto and their heirs, personal representatives, successors and assigns. The access and easement given by the Owner pursuant to this Agreement shall be for the sole purpose as described in subparagraph (a) and (b). Subparagraph (c) shall not be interpreted to expand the purposes for which access is given, but shall be interpreted to be consistent with subparagraphs (a) and (b) and the purpose for which

³ Subparagraph (b) does not include any costs of purchasing clay and other borrow materials from the Owner, but only includes the payment for access to the property.



access is needed. In no event shall the Agreement be interpreted to provide the LSRG, or any other party, any ownership rights to the Property, or the right to interfere with the Owner's use of the Property, except to the extent Owner's use or access is regulated by law, or Owner's use or access interferes with the LSRG's remediation activities on the Property. Owner agrees to refrain from activity on the Property that could negatively affect the LSRG's remediation efforts or exacerbate the soil or groundwater contamination at or in the vicinity of the LL or LTR sites.

2. Warranties and Representations. The Owner represents and warrants that he has good and indefeasible fee simple title to the Property, free and clear of all liens and encumbrances, except that the Owner owes to the County of Manitowoc back taxes on a portion of the Property. Subject to municipal and zoning ordinances and easements, the Owner represents and warrants that he has the full power and authority to convey the rights granted under this Agreement. If the Owner's representations and warranties under this Section are determined after the effective date of this Agreement to be inaccurate, the LSRG may at its sole option: (a) declare this Agreement null and void, in which case the Owner shall promptly return to the LSRG the full sum paid by the LSRG to the Owner pursuant to Section 3 (Payment of Costs) of this Agreement; or (b) agree with the Owner that this Agreement shall remain effective only if the Owner immediately obtains from all third parties with title and/or rights to the Property a written agreement that such parties shall be bound by the terms of this Agreement, without compensation by the LSRG.

3. Payment of Costs. In consideration for the access and easement granted in this Agreement, the LSRG paid the Owner the sum of Two Hundred Thirty Six Thousand Dollars (\$236,000), as required by the Prior Agreement. Other than as provided in Section 6 hereof, the LSRG shall not be responsible for or be required to reimburse the Owner for any other costs, including without limitation the value of any crops, trees or vegetation on the Property which are damaged or destroyed as a result of the access or easement granted under this Agreement.

4. Improvements. The LSRG shall be responsible for and shall pay all costs incurred in connection with the installation, operation and maintenance of all structures and equipment placed on the Property in connection with the Remediation or any other activities specified in Section 1 (Access) of this Agreement.

5. Indemnification. The LSRG shall indemnify and hold the Owner harmless from and against any and all physical injuries to persons and damage to personal property caused by the actions of the LSRG or their contractors, consultants, and representatives, on the Property arising out of or relating to the access granted under this Agreement, provided, however, that this indemnity shall not apply to any injuries, death, damages, claims, losses, demands, expenses or liabilities that: (a) are caused by the Owner or any third party who is not an agent, employee or contractor (including subcontractors) of the LSRG; or (b) result from the presence of hazardous substances on the Property, unless the damage or injury was caused by an act of omission of the LSRG or its contractors, consultants and representatives.



6. Restoration/Release. Pursuant to the Prior Agreement the LSRG had agreed to perform restoration of the Property upon completion of the Remediation. In full satisfaction of those restoration obligations under the Prior Agreement, LSRG, concurrently with the execution of this Agreement, is paying to Owner the sum of \$75,000 (the "Restoration Payment"). The parties agree that the Restoration Payment will fulfill any and all restoration obligations of the LSRG relating to the Remediation conducted to date on any of the Property, and the parties also agree that the Restoration Payment shall fulfill any and all restoration obligations of the LSRG relating to any remediation to be conducted in the future on the following parcels: (i) LL, including the adjacent property within the existing fence; (ii) the LTR, including the adjacent property within the existing fence; and (iii) the Southwest ¼ of the Southeast ¼ of Section 27 (collectively, the "Released Properties"). The Owner hereby acknowledges that the Restoration Payment is being paid in fulfillment of the LSRG's restoration obligations with respect to the Released Properties and hereby releases LSRG from any present or future obligations to restore the Released Properties during or upon completion of the Remediation.

7. Continuing Obligation to Restore. Notwithstanding the terms of Section 6, the LSRG agrees to restore the areas of the Property, other than the Released Property, where work will be performed subsequent to the date of this Agreement, to its original grade and appearance, to the extent practicable. However, at the conclusion of the Remediation, the LSRG may, at its sole option, leave on the Property, including the Released Property, any underground pipeline installed on the Property.

8. Taxes. The Owner shall be responsible for the timely payment of all real estate taxes, both general and special, levied against the property.

9. Cooperation. The Parties shall cooperate in good faith during the pendency of this Agreement. Except as otherwise specified in this Agreement, the LSRG shall use the Property in a manner so as not to unreasonably interfere with the Owner's rights of reasonable use of the Property. The Owner shall fully cooperate with the LSRG's efforts to remediate the LL and LTR sites and shall assist with the LSRG's efforts to obtain access from other property owners near the LL and the LTR sites.

10. Attorney's Fees. Either Party may enforce this Agreement by appropriate action, and should it prevail in such litigation, it shall recover, as part of its costs, reasonable attorneys' fees.

11. No Waiver of Rights. Nothing in this Agreement shall be construed to waive any rights, claims or privileges which the LSRG may have against any person or entity, and the LSRG expressly reserves all rights of action, claims, and demands against any and all persons and entities under all state and federal statutes and regulations.

12. Compliance with Applicable Laws. The LSRG shall comply with all applicable federal, state or local laws ordinances, rules, orders, or regulations in conducting work on the Property pursuant to this Agreement.



13. Notice. Notices relating to this Agreement shall be sent to the following:

Douglas B. Clark
Foley & Lardner
P.O. Box 1497
150 E. Gilman Street
Madison, WI 53701-1497
(414)297-5826 (Milwaukee)
(608)258-4276 (Madison)

Kenneth Lemberger
10007 Rief Mills Road
Cato, WI 54206
(414)732-4324

14. Amendment and Termination. This Agreement may be amended only by the written agreement of both Parties. This Agreement shall remain in effect until the LSRG provides written notice to the Owner that the activities described herein are concluded, or upon the written agreement of both Parties.

15. Binding Effect. This Agreement, including the benefits and burdens, shall run with the Property and is binding upon and shall inure to the benefit of the Parties hereto and their heirs, personal representatives, successors, and assigns.

16. No Admission of Liability. This Agreement is not an admission of liability on the part of LSRG and/or the Owner.

17. Entire Agreement. This Agreement reflects the entire agreement between the LSRG and the Owner with respect to the matters contained herein, and no statements, promises, or inducements, including without limitation, the contents of the Prior Agreement, that are not contained herein shall be valid or binding.

18. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

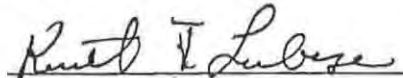
19. Governing Law. This Agreement shall be interpreted under the laws of the State of Wisconsin.

20. Advice of Counsel. The Owner has read this Agreement, has had opportunity to consult with legal counsel, and represents that he knows and understands the content and meaning of the Agreement.

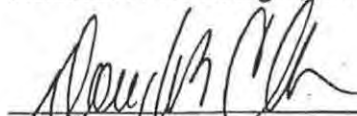
21. Headings. The Section headings contained herein are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Sections.



IN WITNESS WHEREOF, the Parties hereto, which may be represented by and through their appointed counsel, enter into this Agreement, Each person signing this Agreement represents and warrants that he or she has the full power and authority to enter into this Agreement.


Kenneth J. Lemberger, Owner


6-23-00
Date


Douglas B. Clark, Foley & Lardner
Attorney for the Lemberger Sites
Remediation Group

6/23/00
Date


STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

—Personally came before me this 23rd day of June, 2000, the above-named Kenneth J. Lemberger, to me known to be the person who executed the foregoing instrument and acknowledge that he executed the same.


Monica J. Bohman
Notary Public, Dane County, Wisconsin
My commission expires October 26, 2003

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 23rd day of June, 2000, the above-named Douglas B. Clark, to me known to be the person who executed the foregoing instrument and acknowledge that he executed the same.


Monica J. Bohman
Notary Public, Dane County, Wisconsin
My commission expires October 26, 2003

DRAFTED BY:

ATTORNEY DOUGLAS B. CLARK
FOLEY & LARDNER
POB 1497
MADISON, WI 53701-1497

NR 0146208

EXHIBIT AParcel 1:

The Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section Numbered Twenty-seven (27) Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

Parcel No.: 5-027-012-00.00

Parcel 2:

The East One-half (E1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin and the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

Parcel No.: 5-034-002-001.00
5-034-001-000.00

Parcel 3:

The Southwest 1/4 of the Southeast 1/4 of Section Number 27, Township Number 20 North, Range Number 22 East of the Fourth Principal Meridian, located in the Town of Franklin, County of Manitowoc, State of Wisconsin.

Parcel No.: 5-027-015-001.00
5-027-015-002.00

Lemberger

Affidavits of Interest in Real Property

842315

160

Affidavit of Interest
In
Real Property

Document Number

VOL 1387 PAGE 160

STATE OF WISCONSIN - MANITOWOC COUNTY
PRESTON JONES, REGISTER OF DEEDS
RECEIVED FOR RECORD

17 AUG 1999 1:32:41 PM

DOUGLAS B. CLARK, an attorney at the law firm of Foley and Lardner and legal counsel to the Lemberger Sites Remediation Group ("LSRG"), hereby certifies that the following statements are true.

1. LSRG is a group of companies, corporations, municipalities and other parties that, as directed by the United States Environmental Protection Agency ("USEPA") and the Wisconsin Department of Natural Resources ("WDNR"), are responsible for remediating environmental contamination associated with, and allegedly originating at, the Lemberger Landfill Superfund Site and the Lemberger Transport & Recycling Site (the "Sites.")

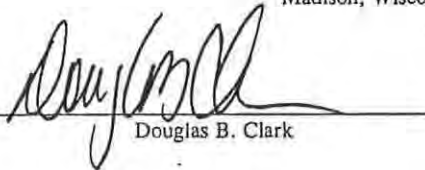
2. In order to facilitate the remediation of the Sites, LSRG and USEPA have entered into certain Access Agreements and Easement Agreements with the owners of the parcels in the vicinity of the Sites. These Access Agreements and Easements permit LSRG, USEPA, and WDNR to enter the properties to: install, operate and monitor the groundwater and leachate extraction and monitoring wells; in some cases, install, operate and monitor pipelines and associated

equipment necessary to transport groundwater and treated effluent; in some cases, install, operate and monitor landfill caps, clay and soil borrow sources; and a variety of other activities necessary to complete the USEPA and WDNR required remediation at, and associated with, the Sites.

3. The parcel described on Exhibit "A", attached hereto and incorporated herein, is subject to Access Agreements and/or Easements in favor of LSRG, USEPA and WDNR. Any conveyance, transfer, lease or encumbrance affecting such property will be subject to such Access Agreements and/or Easements and the purpose of this Affidavit is to give the public notice of such interest.


4. Additional information regarding the encumbrances on this parcel may be obtained by contacting Attorney Douglas B. Clark at:

Foley & Lardner
150 East Gilman Street
P.O. Box 1497
Madison, Wisconsin 53701-1497


Douglas B. Clark

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

Personally came before me this 16th day of August, 1999, the above named DOUGLAS B. CLARK, to me known to be the person who executed the foregoing and acknowledged the same.


Notary Public
DANE, County
State of WISCONSIN
My commission 10/31/99

This instrument was drafted by Douglas B. Clark, Foley & Lardner.

EXHIBIT A

The Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section Number 27, Township Number 20 North, Range Number 22 East of the Fourth Principal Meridian, located in the Town of Franklin, County of Manitowoc, State of Wisconsin.

Parcel No.: 5-027-015-001.00
5-027-015-002.00

845939
Document Number

Affidavit of Interest
In
Real Property

VOL 1397 PAGE 687

STATE OF WISCONSIN - MADISON COUNTY
PRESTON JONES, REGISTER OF DEEDS
RECEIVED FOR RECORD

10/15/1999 10:39:50 AM

DOUGLAS B. CLARK, an attorney at the law firm of Foley and Lardner and legal counsel to the Lemberger Sites Remediation Group ("LSRG"), hereby certifies that the following statements are true.

1. LSRG is a group of companies, corporations, municipalities and other parties that, as directed by the United States Environmental Protection Agency ("USEPA") and the Wisconsin Department of Natural Resources ("WDNR"), are responsible for remediating environmental contamination associated with, and allegedly originating at, the Lemberger Landfill Superfund Site and the Lemberger Transport & Recycling Site (the "Sites.")


2. In order to facilitate the remediation of the Sites, LSRG and USEPA have entered into certain Access Agreements and Easement Agreements with the owners of the parcels in the vicinity of the Sites. These Access Agreements and Easements permit LSRG, USEPA, and WDNR to enter the properties to: install, operate and monitor the groundwater and leachate extraction and monitoring wells; in some cases, install, operate and monitor pipelines and associated

equipment necessary to transport groundwater and treated effluent; in some cases, install, operate and monitor landfill caps, clay and soil borrow sources; and a variety of other activities necessary to complete the USEPA and WDNR required remediation at, and associated with, the Sites.

3. The parcels described on Exhibit "A", attached hereto and incorporated herein, are subject to an Access Agreement in favor of LSRG, USEPA and WDNR. Any conveyance, transfer, lease or encumbrance affecting such property will be subject to such Access Agreements and/or Easements and the purpose of this Affidavit is to give the public notice of such interest.

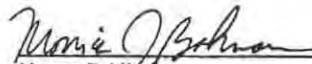
4. Additional information regarding the encumbrances on these parcels may be obtained by contacting Attorney Douglas B. Clark at:

Foley & Lardner
150 East Gilman Street
P.O. Box 1497
Madison, Wisconsin 53701-1497


Douglas B. Clark

STATE OF WISCONSIN)
COUNTY OF DANE) SS

Personally came before me this 12th day of October, 1999, the above named Douglas B. Clark, to me known to be the person who executed the foregoing and acknowledged the same.


Notary Public
Dane County
State of Wisconsin
My commission expires October 31, 1999.

This instrument was drafted by Douglas B. Clark, Foley & Lardner.

687

NR 0146211

EXHIBIT AParcel 1:

The Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section Numbered Twenty-seven (27) Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

Parcel 2:

The East One-half (E1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin and the West One-half (W1/2) of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

850828

Affidavit of Interest
In
Real Property

Document Number

VOL 1413 PAGE 119

STATE OF WISCONSIN - MANITOWOC COUNTY
PRESTON JONES, REGISTER OF DEEDS
RECEIVED FOR RECORD

14 JAN 2000 11:01:54 AM

DOUGLAS B. CLARK, an attorney at the law firm of Foley and Lardner and legal counsel to the Lemberger Sites Remediation Group ("LSRG"), hereby certifies that the following statements are true.

1. LSRG is a group of companies, corporations, municipalities and other parties that, as directed by the United States Environmental Protection Agency ("USEPA") and the Wisconsin Department of Natural Resources ("WDNR"), are responsible for remediating environmental contamination associated with, and allegedly originating at, the Lemberger Landfill Superfund Site and the Lemberger Transport & Recycling Site (the "Sites.")

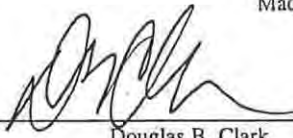
2. In order to facilitate the remediation of the Sites, LSRG and USEPA have entered into certain Access Agreements and Easement Agreements with the owners of the parcels in the vicinity of the Sites. These Access Agreements and Easements permit LSRG, USEPA, and WDNR to enter the properties to: install, operate and monitor the groundwater and leachate extraction and monitoring wells; in some cases, install, operate and monitor pipelines and associated

equipment necessary to transport groundwater and treated effluent; in some cases, install, operate and monitor landfill caps, clay and soil borrow sources; and a variety of other activities necessary to complete the USEPA and WDNR required remediation at, and associated with, the Sites.

3. The parcel described on Exhibit "A", attached hereto and incorporated herein, is subject to an Access Agreement in favor of LSRG, USEPA and WDNR. Any conveyance, transfer, lease or encumbrance affecting such property will be subject to such Access Agreements and/or Easement and the purpose of this Affidavit is to give the public notice of such interest.

4. Additional information regarding the encumbrances on these parcels may be obtained by contacting Attorney Douglas B. Clark at:

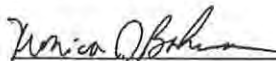
Foley & Lardner
150 East Gilman Street
P.O. Box 1497
Madison, Wisconsin 53701-1497



Douglas B. Clark

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

Personally came before me this 12th day of January, 2000, the above named Douglas B. Clark, to me known to be the person who executed the foregoing and acknowledged the same.



Notary Public

Dane County

State of Wisconsin

My commission expires: 10/26/03

This instrument was drafted by Douglas B. Clark, Foley & Lardner.

EXHIBIT A

The East One-half (E1/2) of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin.

Terry Lemberger

Access and Easement Agreement

Document Number

ACCESS AND EASEMENT AGREEMENT

After recording, return to:

Attorney Douglas B. Clark

Foley & Lardner

P.O. Box 1497

Madison, Wisconsin 53701-1497

See attached Exhibit A

Parcel Identification Number(s)

This Access and Easement Agreement (the "Agreement") is dated this 11 day of May, 2001, and is between Terrence C. Lemberger (the "Owner") and the Lemberger Sites Remediation Group ("LSRG"), whose members are the City of Manitowoc, Manitowoc Company, Manitowoc Public Utilities, Newell Rubbermaid Inc., Red Arrow Products Company, LLC, Invincible Metal Furniture Company, Inc., and The Great Atlantic & Pacific Tea Company, Inc.

WHEREAS, the Owner owns property in Section 34, Township Number Twenty(20) North, Range Number Twenty-two (22) East, in the Town of Franklin, Manitowoc County, Wisconsin, more particularly described on the attached Exhibit A (the "Property").

The Property includes portions of the Lemberger Transport Recycling ("LTR")¹ Superfund site located near the Village of Whitelaw, which has been listed on the National Priority List under the Comprehensive Environmental Response, Compensation and Liability Act;

¹ The LTR site is located in the East One-half (E1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin and the West One-half (W1/2) of the Northeast Quarter (NE1/4) of Section Numbered Thirty-four (34), Township Numbered Twenty (20) North, Range Numbered Twenty-two (22) East, in the Town of Franklin.

WHEREAS, the LSRG desires unrestricted, continuous and permanent access to the Property for itself, U.S. EPA, WDNR, and their contractors, consultants and representatives;

WHEREAS, the LSRG has been investigating and remediating hazardous substance contamination at the LTR Site (the "Remediation") under the direction of the United States Environmental Protection Agency ("U.S. EPA") and the Wisconsin Department of Natural Resources ("WDNR"), pursuant to Consent Decree No. 92-C-0583 (E.D. Wis. 1992) and Administrative Order by Consent No. V-W-93-C-196 (U.S. EPA Region V, 1993)(the "AOC");

NOW, THEREFORE, in consideration of mutual promises contained in this Agreement, the sufficiency of which is hereby expressly acknowledged, the Owner and the LSRG (hereinafter collectively the "Parties") hereby agree as follows:

1. Access. The Owner grants to the LSRG, U.S. EPA, WDNR, and their contractors, consultants and representatives a perpetual easement and access to the Property for the purpose of: (a) preparing for and conducting the Remediation, including but not limited to the construction, operation and maintenance of a groundwater treatment system, a portion of which may be located on the Property and (b) any other purpose deemed reasonably necessary by the LSRG, U.S. EPA and/or WDNR, pursuant to the Consent Decree and AOC. The access and easement granted under this Agreement shall be unrestricted, continuous and permanent, shall run with the land, and shall be binding upon and inure to the benefit of the Parties hereto and their heirs, personal representatives, successors and assigns. The access and easement given by the Owner pursuant to this Agreement shall be for the sole purpose as described in subparagraph (a) and (b). In no event shall the Agreement be interpreted to provide the LSRG, or any other party, any ownership rights to the Property. Owner agrees and understands that the Property is now and will in the future be located inside a fence and that owner will not have access to the property until such time, if ever, that U.S. EPA and WDNR agree that the fence can be removed. Owner agrees to refrain from activity on the Property, or on any adjacent property, that could negatively affect the LSRG's remediation efforts or exacerbate the soil or groundwater contamination at or in the vicinity of the LTR site.

2. Warranties and Representations. The Owner represents and warrants that he has good and indefeasible fee simple title to the Property, free and clear of all liens and encumbrances. Subject to municipal and zoning ordinances and easements, the Owner represents and warrants that he has the full power and authority to convey the rights granted under this Agreement. If the Owner's representations and warranties under this Section are determined after the effective date of this Agreement to be inaccurate, the LSRG may at its sole option: (a) declare this Agreement null and void, in which case the Owner shall promptly return to the LSRG the full sum paid by the LSRG to the Owner pursuant to Section 3 (Payment of Costs) of this Agreement; or (b) agree with the Owner that this Agreement shall remain effective only if the Owner immediately obtains from all third parties with title and/or

rights to the Property a written agreement that such parties shall be bound by the terms of this Agreement, without compensation by the LSRG.

3. Payment of Costs. In consideration for the access and easement granted in this Agreement, the LSRG paid the Owner the sum of Seven Thousand Five Hundred Dollars (\$7500). Other than as provided in Section 6 hereof, the LSRG shall not be responsible for or be required to reimburse the Owner for any other costs, including without limitation the value of any crops, trees or vegetation on the Property which are damaged or destroyed as a result of the access and easement granted under this Agreement.

4. Improvements. The LSRG shall be responsible for and shall pay all costs incurred in connection with the installation, operation and maintenance of all structures and equipment placed on the Property in connection with the Remediation or any other activities specified in Section 1 (Access) of this Agreement.

5. Indemnification. The LSRG shall indemnify and hold the Owner harmless from and against any and all physical injuries to persons and damage to personal property caused by the actions of the LSRG or their contractors, consultants, and representatives, on the Property arising out of or relating to the access granted under this Agreement, provided, however, that this indemnity shall not apply to any injuries, death, damages, claims, losses, demands, expenses or liabilities that: (a) are caused by the Owner or any third party who is not an agent, employee or contractor (including subcontractors) of the LSRG; or (b) result from the presence of hazardous substances on the Property, unless the damage or injury was caused by an act of omission of the LSRG or its contractors, consultants and representatives.

6. Restoration/Release. The Owner agrees that at the conclusion of the Remediation, the LSRG will have no obligation to regrade, remove, or otherwise restore the Property to any particular grade, appearance, or condition. The Owner expressly releases the LSRG from any claim for restoration or any other claim for property damage related to the Property.

7. Taxes. The Owner shall be responsible for the timely payment of all real estate taxes, both general and special, levied against the property.

8. Cooperation. The Parties shall cooperate in good faith during the pendency of this Agreement. The Owner shall fully cooperate with the LSRG's efforts to remediate the LTR site.

9. Attorney's Fees. Either Party may enforce this Agreement by appropriate action, and should it prevail in such litigation, it shall recover, as part of its costs, reasonable attorneys' fees.

10. No Waiver of Rights. Nothing in this Agreement shall be construed to waive any rights, claims or privileges which the LSRG may have against any person or entity, and the LSRG expressly reserves all rights of action, claims, and demands against any and all persons and entities under all state and federal statutes and regulations.

11. Compliance with Applicable Laws. The LSRG shall comply with all applicable federal, state or local laws ordinances, rules, orders, or regulations in conducting work on the Property pursuant to this Agreement.

12. Notice. Notices relating to this Agreement shall be sent to the following:

Douglas B. Clark
Foley & Lardner
P.O. Box 1497
150 E. Gilman Street
Madison, WI 53701-1497
(414)297-5826 (Milwaukee)
(608)258-4276 (Madison)

Terrence C. Lemberger
9715 Highway 42
Newton, WI 53063
(920) 726-4752

13. Amendment and Termination. This Agreement may be amended only by the written agreement of both Parties. This Agreement shall remain in effect until the LSRG provides written notice to the Owner that the activities described herein are concluded, or upon the written agreement of both Parties.

14. Binding Effect. This Agreement, including the benefits and burdens, shall run with the Property and is binding upon and shall inure to the benefit of the Parties hereto and their heirs, personal representatives, successors, and assigns.

15. No Admission of Liability. This Agreement is not an admission of liability on the part of LSRG and/or the Owner.

16. Entire Agreement. This Agreement reflects the entire agreement between the LSRG and the Owner with respect to the matters contained herein, and no statements, promises, or inducements, including without limitation, the contents of the Prior Agreement, that are not contained herein shall be valid or binding.

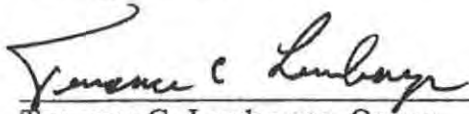
17. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

18. Governing Law. This Agreement shall be interpreted under the laws of the State of Wisconsin.

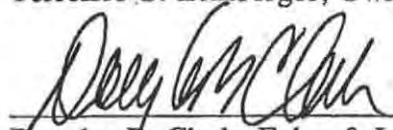
19. Advice of Counsel. The Owner has read this Agreement, has had opportunity to consult with legal counsel, and represents that he knows and understands the content and meaning of the Agreement.

20. Headings. The Section headings contained herein are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Sections.

IN WITNESS WHEREOF, the Parties hereto, which may be represented by and through their appointed counsel, enter into this Agreement, Each person signing this Agreement represents and warrants that he or she has the full power and authority to enter into this Agreement.


Terrence C. Lemberger, Owner

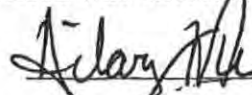
5-11-01
Date


Douglas B. Clark, Foley & Lardner
Attorney for the Lemberger Sites
Remediation Group

5-11-01
Date

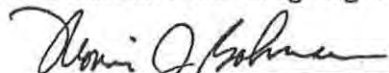
STATE OF WISCONSIN)
) ss.
COUNTY OF Milwaukee)

Personally came before me this 11th day of May, 2001, the above-named Terrence C. Lemberger, to me known to be the person who executed the foregoing instrument and acknowledge that he executed the same.


Notary Public, Dane County, Wisconsin
My commission expires June 27, 2004

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 11th day of May, 2001, the above-named Douglas B. Clark, to me known to be the person who executed the foregoing instrument and acknowledge that he executed the same.


Notary Public, Dane County, Wisconsin
My commission expires Oct 26, 2003

ATTACHMENT G(2)

Braun

Property Use Restriction Agreement



995679

Document Number

PROPERTY USE
RESTRICTION
AGREEMENT

THIS PROPERTY USE RESTRICTION AGREEMENT (this "Agreement") is made and effective as of August 3, 2005, by and between NORBERT AND CLARA GAIL BRAUN (collectively, the "Grantor") and the LEMBERGER SITES REMEDIATION GROUP (the "Beneficiary").

WITNESSETH:

WHEREAS, the Grantor is the fee simple owner of certain real Property (the "Property") located in the Town of Franklin, Manitowoc County, Wisconsin, as described on "Exhibit A" attached hereto and hereby made a part hereof;

WHEREAS, the Grantor and Beneficiary wish to restrict development of those portions of the Property that are unimproved and undeveloped as of the date of this Agreement (the "Restriction") as set forth in the following section;

WHEREAS, the parties wish to make certain other agreements regarding the Restriction as are more particularly set forth below.

STATE OF WI - MTWC CO
PRESTON JONES REG/DEEDS
RECEIVED FOR RECORD
09/26/2005 10:47:58 AM

Recording Area

Drafted by, and after recording, return to:

Douglas S. Buck
Foley & Lardner LLP
P. O. Box 1497
Madison, WI 53701-1497

2119

Parcel Identification Number (PIN)

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and Beneficiary agree to the following Restriction, as set forth below, encumbering the Property.

1. **Purpose.** It is the purpose of this Restriction that those portions of the Property that are unimproved and undeveloped as of the date of this agreement shall remain in an undeveloped and unimproved state, except for any improvements or developments that the Beneficiary authorizes by prior written consent, which consent Beneficiary may withhold in its sole and absolute discretion.

2. **Prohibited Uses, Structures and Activities.** Any improvement to or construction on the Property is hereby prohibited, including but not limited to the following: filling, grading and dredging; excavating; artificial ditching and lagooning; deposition or extraction of materials; construction or erection of any building or structure; road construction; installation of utilities; livestock grazing.



3. **Allowed Uses.** Those portions of the Property that are in agricultural use as of the date of this Agreement may continue to be used for agricultural purposes; provided however, that the Grantor shall not expand the existing agricultural use of the Property without the Beneficiary's written consent, which consent the Beneficiary may withhold in its sole and absolute discretion. Also, nothing in this Agreement shall restrict the right of the Beneficiary to use the Property in any manner authorized by previous agreements between the Grantor and Beneficiary.

4. **Reserved Rights.** Grantor reserves to themselves and their heirs, successors and assigns all rights accruing from the ownership of the Property including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited and that are not inconsistent with the purpose of this Agreement.

5. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Agreement.

6. **Rights and Obligations.** To accomplish the purpose of this Agreement, the following rights are conveyed to Beneficiary by this Agreement: To enter upon the Property at reasonable times to monitor compliance with and otherwise enforce the terms of this Agreement provided that, except in cases where Beneficiary determines that immediate entry is required due to an emergency or to prevent, terminate or mitigate a violation of the Agreement, such entry shall be upon prior reasonable notice to Grantor; and to prevent any activity or use of the Property that is prohibited or inconsistent with the purpose of this Agreement. The rights conveyed to Beneficiary shall also be considered as obligations assumed by Beneficiary.

7. **Control.** Nothing in this Agreement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Beneficiary to exercise physical or managerial control over the operations of the Property or activities on the Property. Beneficiary shall not in any case unreasonably interfere with Grantor's use and enjoyment of the Property.

8. **Remedies.** If Beneficiary determines that a violation of the terms of this Agreement has occurred or is threatened, Beneficiary shall attempt to informally resolve the violation with Grantor. If informal resolution is not successful, Beneficiary shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity prohibited or inconsistent with the purpose of this Agreement, to restore the portion of the Property to its prior condition. If Grantor fails to cure the violation within 30 days after receipt of notice from Beneficiary, or if the violation cannot be reasonably cured within 30 days but Grantor fails to begin curing such violation or fails to continue to diligently cure such violation, Beneficiary may bring an action at law or in equity to enforce the terms of this Agreement, to enjoin violation by temporary or permanent injunction, to require restoration of the Property to the condition that existed prior to the violation and recover all of its costs and expense incurred in connection with such action, including without limitation its reasonable attorneys' fees. If Beneficiary determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Beneficiary may pursue its remedies without prior notice to Grantor. Beneficiary's rights shall apply equally in the event of either actual or threatened violations. Nothing contained in this Agreement shall be construed to



entitle Beneficiary to bring any action against Grantor for injury or change to the Property resulting from causes beyond Grantor's control including but not limited to fire, flood and storm.

9. Non-Waiver. Failure of Beneficiary to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by Grantor shall not be deemed to be a waiver by Beneficiary of such term or of any breach or subsequent breach of the same term or any other term of this Agreement or of any of Beneficiary's rights under this Agreement.

10. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Grantor remains responsible for obtaining any government permits and approvals necessary in connection with Grantor's use and activities on the Property.

11. Assignment. This Agreement is transferable.

12. Subsequent Transfers. Grantor agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including without limitation, a leasehold interest. Grantor further agrees to give written notice to Beneficiary of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Agreement or limit its enforceability in any way.

13. Severability. If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid as the case may be, shall not be affected thereby.

14. Extinguishment. This Restriction shall expire and this Agreement shall be of no further force and effect 60 days following the day that Beneficiary receives notice by mail from the United States Environmental Protection Agency certifying that no further monitoring or remediation activities are required at the Lemberger Superfund Sites, or at any other time agreed upon in writing by the Grantor and Beneficiary or their assigns.

{SIGNATURE PAGE FOLLOWS}



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

GRANTORS:

By: Norbert E. Braun
Norbert Braun

By: Clara Gail Braun
Clara Gail Braun

BENEFICIARY:

LEMBERGER SITES REMEDIATION GROUP

By: Douglas B. Clark
Douglas B. Clark

Its: Agent and Counsel



STATE OF WISCONSIN)
) SS.
COUNTY OF Manitowish)

Personally came before me this 3rd day of August, 2005, the above-named Norbert Braun who executed the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

Robert L. Tauber
Printed Name: Robert L. Tauber
Notary Public, State of Wisconsin
My commission: 3/1/09

STATE OF WISCONSIN)
) SS.
COUNTY OF Manitowish)

Personally came before me this 3rd day of August, 2005, the above-named Clara Gail Braun who executed the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

Robert L. Tauber
Printed Name: Robert L. Tauber
Notary Public, State of Wisconsin
My commission: 3/1/09

STATE OF WISCONSIN)
) SS.
COUNTY OF Manitowish)

Personally came before me this 3rd day of August, 2005, the above-named Douglas B. Clark of Lemberger Sites Remediation Group, who executed the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

Robert L. Tauber
Printed Name: Robert L. Tauber
Notary Public, State of Wisconsin
My commission: 3/1/09

EXHIBIT A

Legal Description of Property

The Southeast ¼ of the Southeast ¼ of Section 27, Township 20
North, Range 22 East, in the Town of Franklin, Manitowoc,
Wisconsin.

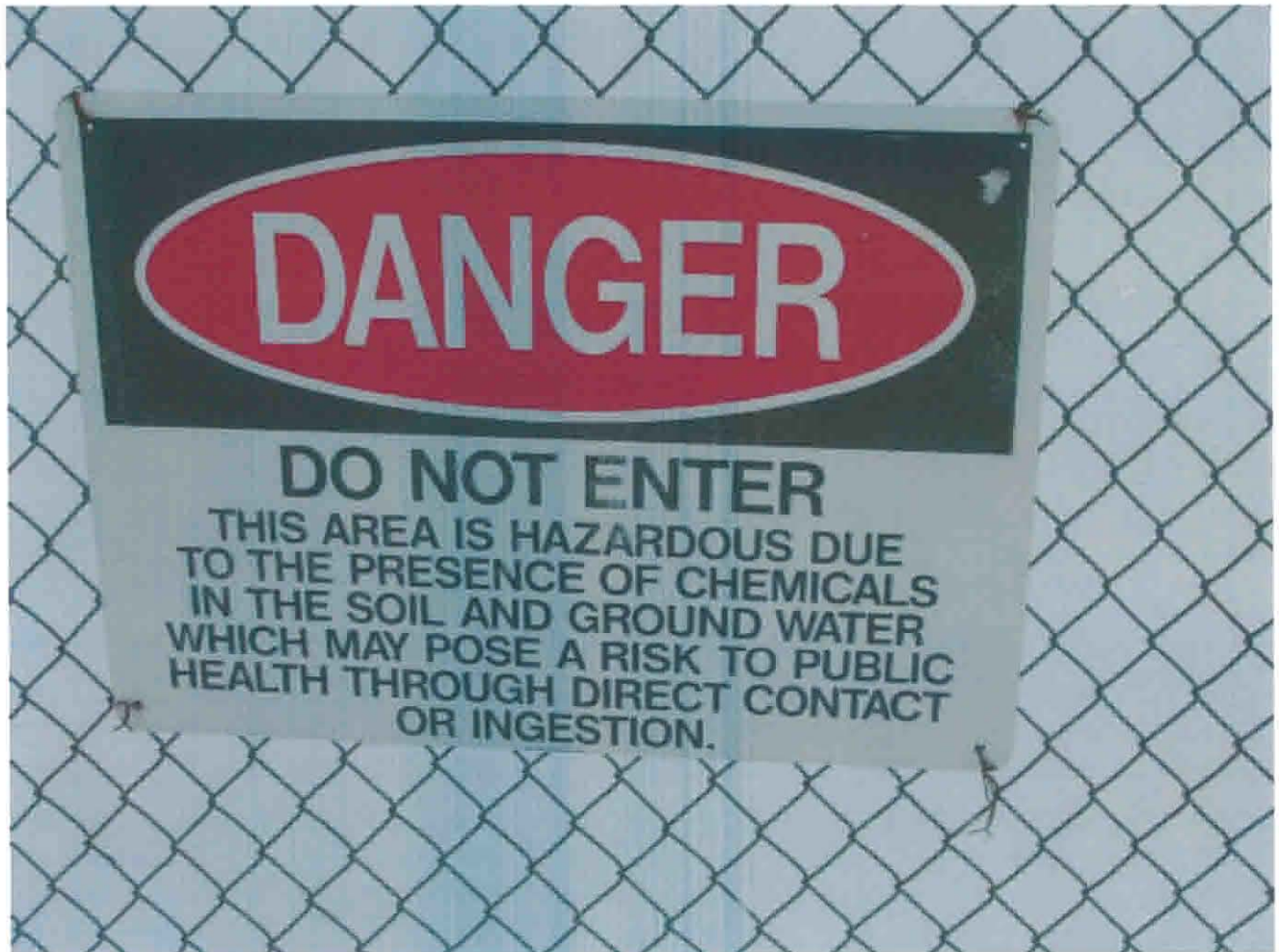


VOL 2119 PG 357

#2119 357 8

ATTACHMENT H

Signs on Fences



Signs on Lemberger Transport & Recycling Site Gates



Signs on Lemberger Landfill Gates

WARNING
POSSIBLE CHEMICAL HAZARD

Site Name: Lemberger Landfill Superfund Site (Fly Ash Site)

DNR Case Number: WID 436016790

This cleanup is being conducted by:
Name: Darryl Owens U.S. EPA RPM
Address: U.S. EPA Region 5, HSR-6J
Chicago, IL 60604
Phone Number: (312) 886-7089



Please contact the person listed above for information on this site.

Types of Contamination are checked below:

<input checked="" type="checkbox"/> Soil Contamination	<input checked="" type="checkbox"/> Groundwater Contamination	<input type="checkbox"/> Sediment Contamination	<input type="checkbox"/> Building Contamination
<input type="checkbox"/> Gasoline	<input type="checkbox"/> Gasoline	<input type="checkbox"/> Petroleum	<input type="checkbox"/> Gasoline
<input type="checkbox"/> Diesel/Heating Fuel	<input type="checkbox"/> Diesel/Heating Fuel	<input type="checkbox"/> Hydraulic (PCBs)	<input type="checkbox"/> Diesel/Heating Fuel
<input type="checkbox"/> Lead	<input type="checkbox"/> Solvents	<input type="checkbox"/> Petroleum Residues	<input type="checkbox"/> Lead
<input type="checkbox"/> Polychlorinated Biphenyls (PCBs)	<input type="checkbox"/> Acids	<input type="checkbox"/> Polychlorinated Biphenyls (PCBs)	<input type="checkbox"/> Polychlorinated Biphenyls (PCBs)
<input type="checkbox"/> Chlorides	<input type="checkbox"/> Metals	<input type="checkbox"/> Mercury	<input type="checkbox"/> Chlorides
<input type="checkbox"/> Polycyclic Aromatic Hydrocarbons (PAHs)	<input checked="" type="checkbox"/> Others: <u>VOC's & SVOC's</u>	<input type="checkbox"/> Lead	<input type="checkbox"/> Others
<input type="checkbox"/> Pesticides		<input type="checkbox"/> Oil & Grease	
<input checked="" type="checkbox"/> Others: <u>Lead</u>		<input type="checkbox"/> Asbestos	
<input type="checkbox"/> Soil (Surface)		<input type="checkbox"/> Gypsum	
<input type="checkbox"/> Soil (Subsurface)		<input type="checkbox"/> Petroleum	
<input type="checkbox"/> Soil (Structure)		<input type="checkbox"/> Others	

Soil Pile - Date Soil Was Placed: / / Date of Required Removal: / /
(Soil piles are to be removed within 6 months.)

If you are interested in general information about environmental cleanups or are interested in reviewing the file for this site or being put on a mailing list for information about this site see provided for in s. 108.714(5)(4), Wisconsin Administrative Code, please contact:

Emergency and Remedial Response program at your local DNR office
State of Wisconsin
Department of Natural Resources

This sign is issued and posted as a requirement of s. 108.714(5)(3), Wisconsin Administrative Code.

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